

No. 11879

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

MARION JONCICH, JOE C. MARDESICH and
ANTOINETTE BOGDANOVICH,

Appellants,

vs.

ANDREW XITCO, JR.,

Appellee.

APOSTLES ON APPEAL

Upon Appeal From the District Court of the United States
for the Southern District of California
Central Division

FILED

MAY 27 1948

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF PROCTORS:

For Appellant:

McCUTCHEN, THOMAS, MATTHEW,
GRIFFITHS & GREENE

HAROLD A. BLACK

PHILIP K. VERLEGER

704 Roosevelt Building

Los Angeles 14, Calif.

For Appellee:

HERBERT R. LANDE

413 West Seventh Street

San Pedro, Calif. [1*]

In the United States District Court
Southern District of California
Central Division

In Admiralty No. 6897-M

ANDREW XITCO, JR.,

Libelant,

vs.

OIL SCREW "PIONEER," Her Tackle, Apparel, and
Equipment,

Respondent.

CITATION

To Andrew Xitco, Jr., Libelant, and His Attorney Herbert
Lande:

Whereas, claimants, Marion Joncich, Joe C. Mardesich, and Antoinette Bogdanovich, have lately appealed to the United States Circuit Court of Appeals for the Ninth Circuit, from the final decree lately rendered in the District Court of the United States, Southern District, Central Division, in the above entitled cause;

You Are Therefore hereby cited to appear before the said United States Circuit Court of Appeals for the Ninth Circuit, in the City of San Francisco, State of California, on the 21st day of February, 1948, to show cause, if any there be, why the said decree entered against the said appellants should not [2] be corrected and why justice should not be done to the parties in that behalf.

Given Under My Hand in the City of Los Angeles, in the State of California, on the 14th day of January, 1948.

LEON R. YANKWICH

United States District Judge [3]

Service of the within and receipt of a copy is hereby admitted this 15 day of January, 1948. Herbert R. Lande, per G. Padfield.

[Endorsed]: Filed Jan. 16, 1948. Edmund L. Smith, Clerk. [4]

[Title of District Court and Cause]

LIBEL IN REM FOR SALVAGE

To the District Court of the United States, for the Southern District of California, Central Division:

The libel of Andrew Xitco, Jr., master of the oil screw vessel called "North Queen", for himself and all others entitled, against the oil screw "Pioneer", her tackle, apparel, and equipment, alleges as follows:

I.

That at all times hereinafter mentioned, libelant was the master of the American oil screw vessel called the "North Queen"; and was and is a resident of the Southern District of California, Central Division.

II.

That the "North Queen" is an oil screw vessel of one hundred fifty tons gross, and length of eighty-two feet; and that her [5] value at the time of the salvage services hereinafter mentioned was \$125,000.00.

III.

That at the times mentioned hereafter, the said vessel "North Queen" was owned by the libelant, 25%, A. K. Anderson, 25%, Arne Strom, 25%, and Haldor Dahl, 25%; that the crew of said vessel consisted of libelant as Master and twelve other crew members.

IV.

That the oil screw "Pioneer", official number 246153, is an American fishing vessel of a type known as a purse seiner; that said vessel is of 183 tons gross, 99 tons net, 86.4 feet in length, and was built in 1944; that the approximate value of said vessel at the time the services herein mentioned were rendered was \$175,000.00.

V.

That on the night of January 9, 1947, the respondent vessel "Pioneer" was sailing in waters off the coast of Southern California, that at or about 7:10 P. M. the said vessel was in waters off Laguna Beach, California; that about said time said vessel was navigating near the shore and ran upon some rocks and became stranded; that said vessel thereupon sent out a call for help on her radio; that the said vessel was then and there in distress and danger, in that she was stranded on rocks so that her own means could not remove her therefrom, and that she was being pounded by breakers and a ground swell.

VI.

That the master of the "North Queen" heard the distress call of the respondent vessel, responded thereto and

immediately went to her aid; that the "North Queen" arrived at the place where the "Pioneer" was stranded at about 7:45 P. M.; that at said time respondent vessel was in distress and danger as alleged [6] aforesaid; that upon the arrival of the "North Queen", the libelant maneuvered her close to the place where the "Pioneer" was stranded, and at that time the master of the "Pioneer" called to the libelant and asked him to take a cable from the "Pioneer" and endeavor to pull that vessel off the rocks; that the libelant agreed to this, and a skiff came from the "Pioneer" carrying a manila line to the "North Queen"; that the manila line was attached to the steel cable from the "Pioneer"; that the "North Queen" took the cable from the skiff and pulled the line and cable aboard the "North Queen", and secured the cable to the main bitts aft; that in order to exert a pull on the cable, it was necessary to raise the cable over the platform and nets on the stern of the "North Queen", and that accordingly a line from the boom of the "North Queen" was used to raise the cable to sufficient height for clearance; that the "North Queen" thereupon began to pull and strain on the cable in an endeavor to free the "Pioneer"; that very shortly the cable parted, but that the line from the boom to the cable was released in time so as to hold the end of the cable and still allowing sufficient play so as not to bring down the rigging of the "North Queen"; that the said cable was again fastened to the bitts of the "North Queen" and the libelant and crew of the "North Queen" again endeavored to free the "Pioneer"; that during the next half hour, by the use of great skill and in-

genuity, the master of the "North Queen" was able to pull the "Pioneer" free of the rocks upon which she was stranded.

VII.

That the respondent vessel "Pioneer" was stranded on the rocks in such a manner that if it had not been for the action of the "North Queen" in freeing her, the "Pioneer" would have been buffeted by the ground swells and breakers, and pounded on the rocks, which would have put her in great danger of having her hull punctured, and could have caused the sinking of the vessel. [7]

VIII.

That the salvage services rendered by the "North Queen" and her crew were salvage services of a high order of merit; that they were furnished promptly, efficiently and skillfully, and under conditions which were rendered difficult and dangerous, and which resulted in the freeing of the "Pioneer".

IX.

That by reason of the premises aforesaid, the owners, masters and crew of the "North Queen" are entitled to a liberal salvage award; that a fair and reasonable salvage award would be the sum of \$17,500.00; that there has not been any payment for said services to the libelant or others.

X.

That all and singular the premises are true, and within the admiralty and maritime jurisdiction of this Court; and the vessel "Pioneer" is now, or during currency of process herein will be, within this District.

Wherefore, libelant prays:

1. That process in due form of law, according to the practice of this Honorable Court in causes of admiralty and maritime jurisdiction, may issue against the said oil screw "Pioneer", her tackle, apparel and equipment;
2. That any and all persons having any interest in said vessel may be cited to appear and answer all and singular the matters aforesaid;
3. That the Court may be pleased to decree to the libelant and others entitled a salvage award in the sum of \$17,500.00;
4. That respondent vessel may be condemned and sold to pay the award made to libelant and others; and
5. That libelant be granted such other and further relief as to the Court seems just.

HERBERT R. LANDE

Proctor for Libelant [8]

[Verified.]

[Endorsed]: Filed Apr. 30, 1947. Edmund L. Smith,
Clerk. [9]

[Title of District Court and Cause]

CLAIM

To the Honorable, the Judges of the United States District Court for the Southern District of California, Central Division:

The Claim of Marion Joncich, Joe C. Mardesich, and Antoinette Bogdanovich, to the Oil Screw "Pioneer", her tackle, apparel, and equipment, now in the custody or about to be seized by the United States Marshal for the Southern District of California, at the suit of libelant above named, alleges that the said Marion Joncich, Joe C. Mardesich, and Antoinette Bogdanovich are the true and lawful owners of said Oil Screw "Pioneer", her tackle, apparel and equipment; that no other person is the owner thereof.

Wherefore, these claimants pray that this Honorable Court will be pleased to decree a restitution of the same to said owners, and otherwise to administer right and justice in [10] the premises.

ANTOINETTE BOGDANOVICH

for and on behalf of Antoinette Bogdanoch,
Marion Joncich, and Joe C. Mardesich.

McCUTCHEN, THOMAS, MATTHEW,

GRIFFITHS and GREENE

HAROLD A. BLACK

PHILIP K. VERLEGER

Proctors for Claimants

[Verified.]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Jun. 5, 1947. Edmund L. Smith,
Clerk. [11]

[Title of District Court and Cause]

ANSWER TO LIBEL

To the Honorable, the District Court of the United States
for the Southern District of California, Central Division:

The answer of Marion Joncich, Joe C. Mardesich, and Antoinette Bogdanovich, as owners of the Oil Screw "Pioneer", her tackle, apparel and equipment, as proceeded against by Andrew Xitco, for and on behalf of the owners and crew of the American Oil Screw vessel called the "North Queen", alleges as follows:

I.

Answering the allegations of paragraph I of the libel, alleges that claimants lack sufficient information to answer the allegations of said paragraph I, and therefore deny said allegations, and ask that libelant be put to strict proof thereof. [12]

II.

Answering the allegations of paragraph II of the libel, alleges that claimants lack sufficient information to answer the allegations of said paragraph II, and therefore deny said allegations, and ask that libelant be put to strict proof thereof.

III.

Answering the allegations of paragraph III of the libel, alleges that claimants lack sufficient information to answer the allegations of said paragraph III, and therefore deny said allegations, and ask that libelant be put to strict proof thereof.

IV.

Answering the allegations of paragraph IV of the libel, admits that the Oil Screw "Pioneer" was built in 1944. Denies that the value of the "Pioneer" was \$175,000.00 at the time the services in question were rendered, and in this behalf alleges that the sound value of said "Pioneer" at such time was approximately \$134,500.00, and that, due to damage previously suffered, the actual value of said Oil Screw "Pioneer", at the time the "North Queen" assisted said "Pioneer", was approximately \$114,000.00.

V.

Answering the allegations of paragraph V of the libel, admits that on the night of January 9, 1947, at approximately 6:30 P. M., at low tide the "Pioneer" was sailing in waters off Laguna Beach, California; that at such time said vessel stranded on a shelf of rock approximately $\frac{3}{4}$ of a mile off said beach; that said vessel then immediately sent out a call for assistance on its radio while at the same time taking steps to free itself [13] by jettisoning stores and lightening ship. Denies that the "Pioneer" was being pounded by breakers and a ground swell. In this behalf claimants allege that the "Pioneer" was not in breakers; that there was substantially no wind on said night; that there was only a slight swell; and that the night of January 9, 1947, was calm. Denies that the "Pioneer" was so stranded that her own means could not remove her; and in this behalf alleges that the "Pioneer" stranded at low tide, that the means of propulsion of said "Pioneer" were undamaged and that she had no leaks in her hull following said stranding, and that it is probable that the said "Pioneer" would have been freed by the rise in tide through the use of her own power. Denies all

of the allegations of said paragraph V not heretofore admitted.

VI.

Answering the allegations of paragraph VI of the libel, admits that a manila line was taken by a skiff from the "Pioneer" to the "North Queen"; that this manila line was attached to a steel cable belonging to the "Pioneer"; that the "North Queen" took said manila line from the skiff and, by pulling upon it, drew the said steel cable on board the "North Queen". Alleges that claimants lack information and belief sufficient to answer the allegations of said paragraph VI respecting the manner in which said cable was secured to the "North Queen", and therefore deny said allegations, and ask that libelant be put to strict proof thereof. Denies that the said "North Queen" was maneuvered close to the place where the "Pioneer" was stranded, and in this behalf alleges that the purpose of carrying the line by skiff to the "North Queen", as aforesaid, was to permit the said "North Queen" to maintain a reasonable and safe distance from the "Pioneer". Admits that the aforesaid cable parted, in part at least, on the first occasion that the [14] "North Queen" took a strain on said cable, but alleges that claimants lack information sufficient to answer the allegation of said paragraph VI that the line from the boom to the cable was released in time so as to hold the end of the cable, and therefore asks that libelant be put to strict proof of said allegation. Denies that there was any danger of bringing down the rigging of the "North Queen"; denies that great skill and ingenuity were required to free the "Pioneer", and in this behalf alleges that freeing of the "Pioneer" required merely the pulling by the "North Queen" on the line from the "Pioneer" for a space of 10

minutes or less. Alleges that the total time expended by the "North Queen" in assisting the "Pioneer", including time coming to and going from the place where such assistance was rendered, was under 2 hours. Denies each and every, all and singular, the allegations of said paragraph VI not heretofore admitted.

VII.

Answering the allegations of paragraph VII of the libel, denies said allegations.

VIII.

Answering the allegations of paragraph VIII of the libel, admits that the salvage services rendered by the "North Queen" were valuable to the "Pioneer", and that they resulted in the freeing of the "Pioneer". Denies that they were rendered under conditions which were difficult or dangerous, and alleges that they were services of the simplest type involving merely pulling on a cable for 10 minutes or less. In this behalf, claimants allege that there was another vessel standing by at the time the "Pioneer" was pulled free, and that if the "North Queen" had encountered any substantial difficulty, the services of said vessel were available for use, in addition to those of the "North Queen". Alleges, in [15] view of the facts heretofore alleged, that the services rendered by the "North Queen" were of a low order of salvage.

IX.

Answering the allegations of paragraph IX of the libel, denies that a fair and reasonable salvage award would be the sum of \$17,500.00; and alleges that a liberal award would not exceed the sum of \$1,000.00, and that claimants are ready and willing to pay said sum of \$1,000.00

to libelant at any time, in satisfaction of their claim for salvage, or any sum adjudged proper by this Honorable Court.

X.

Answering the allegations in paragraph X of the libel, admits that the premises are within the admiralty and maritime jurisdiction of this Court. Denies that the allegations of the libel are true, except as heretofore admitted.

Wherefore, claimants pray:

1. That this Honorable Court decree that libelant is entitled to recover a fair and proper award for salvage.
2. That claimants have and recover their costs of this action.
3. That claimants be granted such other and further relief as the Court deems just.

McCUTCHEN, THOMAS, MATTHEW,
GRIFFITHS and GREENE

HAROLD A. BLACK

PHILIP K. VERLEGER

Proctors for Respondent and Claimants [16]

[Verified.]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Jun. 5, 1947. Edmund L. Smith,
Clerk. [17]

[Title of District Court and Cause]

REQUEST FOR AND ORDER RELEASING
VESSEL FROM CUSTODY OF MARSHAL

Whereas, a libel in rem has heretofore been filed in the above entitled matter; and

Whereas, said Oil Screw "Pioneer", her tackle, apparel, and equipment have been or are about to be seized herein by the United States Marshal; and

Whereas, security satisfactory to libelant has been arranged in the above entitled matter;

Now Therefore, libelant hereby consents and stipulates that the said Oil Screw "Pioneer", her tackle, apparel, and equipment, be released from the custody of the United States Marshal.

Dated: Los Angeles, California, May 23rd, 1947. [18]

HERBERT R. LANDE

Proctor for Libelant

It Is So Ordered:

Dated: June 5, 1947.

LEON R. YANKWICH

United States District Judge

[Endorsed]: Filed Jun. 5, 1947. Edmund L. Smith,
Clerk. [19]

[LIBELANT'S EXHIBIT NO. 6]

In the District Court of the United States, Southern
District of California, Central Division

In Admiralty. No. 6897-Y

Andrew Xitco, Jr., Libelant, vs. Oil Screw "Pioneer",
Her Tackle, Apparel, and Equipment, Respondent

LIBELANT'S INTERROGATORIES

To the Claimants Marion Joncich, Joe C. Mardesich and
Antoinette Bogdanovich, and to McCutchen, Thomas,
Matthew, Griffiths and Greene, their proctors:

The above-named claimants are hereby requested to answer, under oath, on behalf of themselves and the said respondent vessel the following interrogatories propounded by the libelant:

1. Precisely where did the Pioneer become stranded on the night of January 9, 1947, and at what time did she go on the rocks?

2. What was the speed of the Pioneer immediately prior to her stranding?

3. After running upon the rocks what was the exact position of the vessel and in what position was her bow, keel and stern? [20]

4. Were there ground swells present at the time of stranding, and if so what were their direction?

5. What was the contents of the message for assistance that was sent by the Pioneer and at what time was it sent?

6. What means, if any, of the Pioneer were used to remove her off the rocks prior to the arrival of the North Queen?

7. At what time did the North Queen arrive?

8. At what time did the North Queen pull the Pioneer free?

9. Precisely what portions of the Pioneer were damaged by the stranding?

10. If the keel of the Pioneer was damaged, exactly what portions and parts were damaged?

11. What was the cost of repairs to the Pioneer resulting from the stranding, and precisely what portions of the vessel were repaired?

12. What was the weight of the anchor, or anchors, carried on board of the Pioneer on the night of January 9, 1947?

13. Where on the vessel were the anchors carried?

14. What was the length of the anchor cable?

15. What other lengths of cable were carried on board the vessel?

16. What blocks were carried on board, and what were their capacities?

17. Is it not true that when the North Queen arrived at the scene of the stranding, the master of the Pioneer requested the master of the North Queen to take a line from the Pioneer and endeavor to pull the Pioneer off the rocks [21]

18. Was there any catch of fish on board the Pioneer at the time of stranding, and if so, what was its weight?

Dated: August 15, 1947.

HERBERT R. LANDE

Proctor for Libelant [22]

[Affidavit of Service by Mail.]

Case No. 6897-M. Xitco vs. "Pioneer", Libelant's Exhibit 6. Date 10-31-47. No. 6 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. E. M. Enstrom, Jr., Deputy Clerk.

[Endorsed]: Filed Aug. 18, 1947. Edmund L. Smith, Clerk. [23]

[LIBELANT'S EXHIBIT NO. 7]

In the United States District Court for the Southern District of California, Central Division

In Admiralty. No. 6897-Y

Andrew Xitco, Jr., Libelant, vs. Oil Screw "Pioneer", Her Tackle, Apparel and Equipment, Respondent.

ANSWER TO LIBELANT'S INTERROGATORIES

1. Answer to libelant's first interrogatory: The Pioneer became stranded at approximately 6:30 p. m. Her position was $3/4$ of a mile directly off shore from the hotel at Laguna, California.

2. Answer to libelant's second interrogatory: The speed of the Pioneer immediately prior to her stranding was approximately seven knots.

3. Answer to libelant's third interrogatory: The position of the vessel was parallel to the shore line, about $3/4$ of a mile out. Claimants believe that the keel was on an underwater rock table. The bow of the Pioneer was in an easterly and southerly position and the stern of the vessel was in a westerly and southerly position. [24]

4. Answer to libelant's fourth interrogatory: There were no swells noticed at the time the Pioneer stranded. A slight swell was noticed while the Pioneer was on the strand.

5. Answer to libelant's fifth interrogatory: The Pioneer broadcast the word "Mayday" over its radio telephone, which is a distress signal, and asked that any boats in a position to do so some immediately to its assistance. The message was sent immediately upon stranding.

6. Answer to libelant's sixth interrogatory: Prior to the arrival of the North Queen, the Pioneer had attempted to back off the rock table under its own power. It attempted thereafter to place its anchors at a distance from the Pioneer in order to use them in an attempt to pull the Pioneer off. At the time the North Queen arrived, the Pioneer was preparing to pump water and fuel oil overboard.

7. Answer to libelant's seventh interrogatory: The North Queen arrived at about 7 p. m.

8. Answer to libelant's eighth interrogatory: The Pioneer came off the strand at about 8 p. m.

9. Answer to libelant's ninth interrogatory: The keel shoe, keel, forefoot, stem band, forefoot sheathing, fathometer, hull fitting blocks, caulking in bottom butts and seams, rudder, quadrant and steering gear, rudder stuffing box, propeller blades, tail shaft, stern bearing and stuffing box, and screens on sea suction all showed damage or were disturbed.

10. Answer to libelant's tenth interrogatory: The keel of the Pioneer was damaged along its full length.

11. Answer to libelant's eleventh interrogatory: The portions of the vessel specified heretofore as damaged were repaired. The cost of repairs to the Pioneer resulting from the stranding [25] was \$16,432.20.

12. Answer to libelant's twelfth interrogatory: The Pioneer had one 400-lb. anchor and one 600-lb. anchor.

13. Answer to libelant's thirteenth interrogatory: One of the anchors was carried on the port and the other on the starboard hawse hole on the bow of the Pioneer.

14. Answer to libelant's fourteenth interrogatory: The 400-lb. anchor had a 125-fathom chain attached; the 600-lb. anchor had a 100-fathom chain attached.

15. Answer to libelant's fifteen interrogatory: The Pioneer had one 250-fathom 5/8-inch steel cable, and one 500-fathom 5/8-inch steel cable.

16. Answer to libelant's sixteenth interrogatory: The Pioneer had one 14-inch double block, which claimants believe can safely lift approximately five tons, possibly more. The Pioneer had one single block containing two 12-inch single roller blocks, believed capable of safely lifting about two tons. The Pioneer also had an ordinary cargo block, probably capable of lifting safely one and one-half tons.

17. Answer to libelant's seventeenth interrogatory: Upon arrival the North Queen was requested by the Pioneer to take a line from the Pioneer and endeavor to pull the Pioneer off the rocks.

18. Answer to libelant's eighteenth interrogatory: There was no catch on board the Pioneer at the time of the stranding.

MARION JONCICH [26]

[Verified.]

[Affidavit of Service by Mail.]

Case No. 6897-M. Xitco vs. "Pioneer". Libelant's Exhibit 7. Date 10-31-47. No. 7 in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. E. M. Enstrom, Deputy Clerk.

[Endorsed]: Filed Oct. 8, 1947. Edmund L. Smith, Clerk. [27]

[RESPONDENT'S EXHIBIT C]

In the District Court of the United States, Southern District of California, Central Division

In Admiralty. No. 6897-Y

Andrew Xitco, Jr., Libelant, vs. Oil Screw "Pioneer", Her Tackle, Apparel and Equipment, Respondent.

DEPOSITIONS OF JOHN JONCICH, ANDREW JONCICH AND LLOYD JUDY

(On Behalf of Claimants)

Everett, Washington,
August 29, 1947.
2:00 o'clock p. m.

Depositions of John Joncich, Andrew Joncich and Lloyd Judy, taken on behalf of Claimants at Everett, Washington, August 29, 1947, on behalf of Claimant, before Earl R. Field, Notary Public.

Original [28]

In the District Court of the United States, Southern District of California, Central Division

In Admiralty. No. 6897-Y

Andrew Xitco, Jr., Libelant, vs. Oil Screw "Pioneer", Her Tackle, Apparel, and Equipment, Respondent.

STIPULATION FOR TAKING OF DEPOSITION

It Is Hereby Stipulated by and between the undersigned parties that the deposition of the following named witnesses may be taken by claimants herein upon oral interrogatories at Court Room No. 2, Snohomish County

Court House, Everett, Washington, before Earl Field, Notary Public, or any other duly qualified Notary Public in the State of Washington:

The deposition of John Joncich shall be taken at 2:00 P. M. on September 2, 1947 at said Court Room before said Notary Public.

The taking of the deposition of Andrew Joncich shall be at 3:00 P. M., or following the completion of the deposition of John Joncich, on September 2, 1947 at said Court Room before said Notary Public. [29]

The taking of the deposition of Lloyd Judy shall be at 3:30 P. M., or following the completion of the deposition of Andrew Joncich, on September 2, 1947 at said Court Room before said Notary Public.

The taking of the said depositions shall continue for so long as is necessary, and may be continued from day to day, if necessary, for the full interrogation of the said witnesses.

Reading and signing of the depositions by the witnesses is waived.

Dated this 14th day of August, 1947.

McCutchen, Thomas, Matthew, Griffiths and Greene
(McCutchen, Thomas, Matthew, Griffiths & Greene)

Harold A. Black

(Harold A. Black)

Philip K. Verleger

(Philip K. Verleger)

Proctors for Respondent and Claimants

Herbert R. Lande

(Herbert R. Lande)

Proctor for Libelant, Andrew Xitco, Jr. [30]

In the District Court of the United States, Southern District of California, Central Division

In Admiralty. No. 6897-Y

Andrew Xitco, Jr., Libelant, vs. Oil Screw "Pioneer",
Her Tackle, Apparel, and Equipment, Respondent.

DEPOSITIONS OF JOHN JONCICH, ANDREW
JONCICH AND LLOYD JUDY

(On behalf of Claimants)

Everett, Washington,
August 29, 1947.
2:00 o'clock P. M.

Depositions of John Joncich, Andrew Joncich and Lloyd Judy, taken on behalf of Claimants herein, pursuant to stipulation for taking depositions hereto attached, upon oral interrogatories, at Courtroom No. 2, Snohomish County Courthouse, Everett, Washington, August 29, 1947 (the time of taking depositions having been advanced from the date of September 2, 1947, at the hour of 2:00 o'clock P. M., at the same time and place, and the same Notary Public)—the said depositions being taken before Earl R. Field, a Notary [31] Public in and for the State of Washington, residing at Seattle, Washington.

Gerald H. Bucey, Esq. (of Messrs. Merritt, Summers & Bucey), appearing for Messrs. McCutchen, Thomas, Matthew, Griffiths & Greene; and Harold H. Black, appearing as Proctor for and on behalf of Claimants; and

There being no appearance by Proctor, or attorney or counsel for and on behalf of Libelant;

Whereupon the following proceedings were had and testimony taken, to-wit:

Mr. Bucey: Let the record show that the time of taking these depositions had been advanced to the date of August 29, 1947, rather than the date noted in the stipulation hereto attached of September 2, 1947.

Let the record also show that the reading and signing of the depositions by the witnesses here present has been waived. I will first call Mr. John Joncich. [32]

JOHN JONCICH,

called as a witness on behalf of Claimant, pursuant to stipulation and advanced time of taking deposition hereto attached, being first duly sworn, testified upon oath by deposition as follows:

Direct Examination

By Mr. Bucey:

Q. State your name, please. A. John Joncich.

Q. What is your age? A. Thirty-three.

Q. Where do you reside?

A. In Everett, Washington.

Q. State whether or not you have any interest in a fishing vessel called the Sunlight? A. I have.

Q. What is your interest? A. Half.

Q. You have a half interest in her?

A. I have a half interest in her.

Q. Who owns the other half?

A. My brother, Andrew Joncich.

Q. What is the size of that boat?

A. 81 feet and one inch. [33]

Q. That is her length? A. That is her length.

Q. What is her beam? A. 22 feet.

Q. What is her depth? A. Ten feet, one inch.

Q. What kind of power does she have?

A. 250 horsepower, Atlas, diesel.

Q. On January 9, 1947, were you on board that vessel? A. That is right.

Q. Where were you with the vessel at that time?

A. I would say we were outside, about seven miles west of Dana Point.

Q. Is that in what is known as the Laguna Beach area? A. That is right.

Q. That is between what main California ports?

A. It is 30 miles from San Pedro Harbor.

Q. How much of a crew did you have aboard at that time? A. Eleven men, including myself.

Q. Was your brother one of the members of the crew? A. Yes, sir.

Q. Who was the Master of the vessel at that time?

A. I was.

Q. What were you engaged in doing?

A. Fishing for sardines. [34]

Q. At what time or day or night do you engage in that fishing?

A. Well, from dark until dawn—as long as the moon permits. If the moon is out we do not fish.

Q. You fish in the dark of the moon?

A. We fish in the dark of the moon, yes.

Q. Was it dark on this occasion?

A. Yes, it was dark.

Q. State whether or not your vessel had a radio telephone? A. It has.

Q. Did it have it at that time? A. Yes, sir.

Q. State whether or not on that night you heard any distress calls from any other vessel. A. I did.

Q. What vessel was it? A. The Pioneer.

Q. About what time of day or night was it when you heard that, if you recall?

A. Well, as I look back I think it was around between 7:00 and 7:30 at night.

Q. In the evening?

A. It was in the evening, it was dark.

Q. Your recollection of the exact time is what?

A. Between 7:00 and 7:30. I would say about that time. [35]

Q. Did you answer the call? A. I did.

Q. On your radio telephone? A. That is right.

Q. Did you get the position of the Pioneer over the radio telephone?

A. I got his approximate position, and I told him to spin his search light in the air, so I could get him definitely right in the spot.

Q. This message that came over the radio telephone from that vessel, did that say anything about the reason for their distress call?

A. No. They said they were on the rocks.

Q. State what you did at that.

A. After I got his position?

Q. Yes.

A. I went straight in towards the beach, towards his signal, his light signal—searchlight.

Q. How far did you have to go to reach him, from the point where you heard this call to where you found him?

A. Offhand, I would say about 20 minutes in to the beach, straight in towards him.

Q. That would be about how many miles, roughly?

A. Well, about three miles.

Q. When you arrived in the vicinity of this other vessel— [36] the Pioneer, you say it was?—

A. Yes.

Q. Was there any other vessel around, other than the Pioneer? A. There was the North Queen.

Q. Was that another fishing boat?

A. That was another fishing boat.

Q. What was the North Queen doing at that time?

A. They were getting a cable from the Pioneer, and if I can remember exactly I think they were starting to try to tow the Pioneer off the rock.

We came there, and we were late in getting there, because the North Queen happened to be closer and he heard the S.O.S. call, and saw the searchlight. I was able to answer the call, but he went directly to the lights, and he was trying to tow him in the meantime while we had come up to him.

Q. Just confine yourself to what you saw.

A. That is right. That is all I saw.

taking

Q. When you got there was he ~~towing~~ taking a tow-line off from the Pioneer, or was he already made fast to her with the tow-line?

A. I think he was already made fast to her, yes.

Q. Did you observe what kind of a place the Pioneer was stranded? [37]

A. I did, because I spotted everything around him there, and there was kelp outside of him, towards the sea. I don't recall how close it was from the rock to the beach, although I did notice that the rock was kind—was kind of breaking where it was sitting on top.

Q. You could see the water breaking over?

A. Yes; in the dark. We spotted it with our light.

Q. What kind of a night was it?

A. It was a very clear night. You could see his lights for three miles.

Q. You said there was no moon?

A. There was no moon.

Q. It was a dark night?

A. It was a dark night.

Q. But clear? A. It was clear.

Q. What was the condition of the sea?

A. Very, very light sea.

Q. Was there a swell running?

A. Very little; just rolling very little on the rocks.

Q. How close in to the Pioneer did you go with your boat?

A. As close as I dared. I would say it would be—I don't know, offhand—I could approximately say—I didn't want to get any closer than four fathoms of water to him, which probably would be maybe 100 feet or so from him. [38]

Q. With reference to the position of the North Queen, you go in as far as the North Queen was?

A. Not any further than he was. He was right alongside of me.

Q. Did you have a fathometer on your boat?

A. We have.

Q. And you had one at that time? A. Yes, sir.

Q. What was the depth of water when you went in alongside the North Queen?

A. Well, to recall it closely, I had one man on the fathometer, and I told him to let me know any farther than five fathoms. I was in about five fathoms.

Q. You went in to about five fathoms? A. Yes.

Q. How large a boat was the Pioneer?

A. I don't know how large she is. She is a lot larger than our boat.

Q. She was larger? A. Yes.

Q. Did she appear to be a diesel boat?

A. She is a diesel boat; yes, sir.

Q. State whether or not you made any preparations to assist in pulling the Pioneer off? A. I did. [39]

Q. What did you do?

A. I asked them that in case the North Queen could not pull them off with the one line they had on him, that we would have another line put on ourselves, and both boats try to tow him off.

Q. You communicated that to whom?

A. To the fellows from the boat. We talked to them on the boat.

Q. That was from the Pioneer?

A. Yes. We talked from boat to boat.

Q. You were within speaking distance then?

A. Yes. There was a skiff in between us, the skiff of the Pioneer. It was between us and the Pioneer, and I told the fellows in the skiff to tell the Skipper on the Pioneer that if the North Queen could not pull him out alone—if they wanted us to put a line on them also, we would do it—and they said that would be o.k.

But in the meantime the North Queen—they tried the first time, and that is why I asked them—the cable snapped, I think the first time—

Q. Did you see it snap?

A. Yes. We were along side. In case he couldn't do it the second time we would put a line on from both boats.

Q. After the cable snapped was that same cable used again?

A. I couldn't tell you that, if it was the same cable or [40] another cable.

Q. Did you see what kind of a cable it was?

A. No. It was dark. I have an idea what cable it was. It was probably the purse cable off the net. That is all I can say.

Q. Do I understand you that the North Queen made fast again to the Pioneer?

A. Yes.

Q. And pulled?

A. Pulled.

Q. Did you observe when the North Queen was pulling in what way she pulled?

seaward

A. She was pulling straight ~~sea-way~~, straight out to sea.

Q. Which way was the Pioneer heading?

A. The bow of the Pioneer was facing the shore, with the stern about a quarter out to sea.

Q. Then they pulled her straight astern?

A. I would say a 45-degree astern.

Q. State whether or not as you observed the North Queen she pulled straight astern, or whether she attempted to pull sideways at any time.

A. As far as I could see, she was pulling straight seaward

~~sea-way~~, straight out.

Q. Just in one position?

A. That is right. That was the quickest way, I guess. [41]

Q. Did you remain there during all the time that she was pulling, after you arrived there?

A. We stayed there until the Pioneer was free of the rock.

Q. You have spoken of kelp— A. Yes.

Q. Did you observe whether or not either the North Queen

~~Pioneer~~ or your vessel was in any danger of fouling the propellers in the kelp beds at the places where you went?

A. No. I did not get that close. I had my spot, spotted on the kelp, and I didn't want to go any closer.

Q. So far as you observed, state whether or not the North Queen

~~Pioneer~~ went into a place where she was in danger from kelp?

A. No; she was going off, outside of that rock. And after she was out she was out there and clear of the kelp and the rocks. That is all I wanted there for.

Q. State whether the North Queen, as you observed her, got into the kelp, where she would foul her propeller?

A. I could not say that. I never saw her. All we saw her, she was on the outside, with a line on her.

Q. During the time you observed her did she get into the kelp?

A. I don't know. I couldn't say, because we were staying outside of the kelp.

Q. You were staying out farther than she was?

A. We were right along side; maybe about 30 or 40 feet on [42] the side. We were just standing by.

Q. Did you observe any kelp around the North Queen?

A. Around her?—No,—not that I remember.

Q. State whether or not you were always able to keep in position, where there was enough water under you for safety. A. I was.

Q. Could you see, and did you observe where the tow-line was made fast, on the Pioneer?

A. I couldn't tell for sure, but I believe it was on his bitt, his tow bitt in the middle of the boat.

Q. Did you observe where the tow-line was made fast to the North Queen?

A. Yes, I did. They had all their deck lights. It was onto tied ~~under~~ their tow-bitt.

Q. When you speak of the tow-line being made fast to the tow-bitt of the Pioneer, are you referring to the first time when you saw it or the second time?

A. No. I imagine that line was tied to the tow-bit. I don't know whether it was around, because I couldn't tell. But seeing the boat was being towed at kind of an onto angle, sideways, I figured it was tied ~~under~~ the tow-bitt.

Q. About how long did the Sunlight stand by before the Pioneer was pulled off?

A. It is hard to say, because I never had no intentions of ever—I didn't have anything to do with the boat, or [43] anything—and I just stood there until the boat was pulled off. I would say approximately an hour and a half, anyway.

Q. Do you think it was that long?

A. I would say approximately an hour, or hour and a half. I don't want to commit myself to something I am not sure of.

Q. You are not sure it was that long?

A. No. It might have been longer, and might have been less. I couldn't say.

Q. Did you keep a log on the Sunlight?

A. I had no log on the Sunlight. The only log I had was the radio log.

Q. You didn't keep any bridge log at that time?

A. No.

Q. Was any notation made by you in any log of when you received this radio message?

A. No. I thought I had it in my log book, but I didn't make the call to the Pioneer, so I didn't put it down,—no time. Any time you make another call to some other boat you have to log it down. But I got the S.O.S. call, and I answered the call and that was it.

Q. You made no entries in the log?

A. I made no entries in the log. I thought I did it, but I didn't make any entry in my log. [44]

Q. You have looked at the log recently?

A. Yes.

Q. And there is no entry there?

A. No; not for the Pioneer.

Q. Where is that radio log now?

A. It is on the boat in Astoria, Oregon.

Q. Was there any entry made in the radio log, or anywhere else, as to when you arrived at the vicinity of the Pioneer? A. No.

Q. Nor was there any entry made any place by you, or anybody on board your boat, as to when the Pioneer was pulled off? A. No; there was not.

Q. When the Pioneer was pulled off, what was done then by the Pioneer and the North Queen?

A. That I cannot answer, because we left as soon as I asked them if everything was o.k.

Q. Did you observe whether the Pioneer proceeded away from that vicinity? A. No; I did not.

Q. Did you observe whether the North Queen did?

A. I did not. We left before they got through,—I guess picking up their tow-lines, or whatever they did.

Q. She was definitely off the reef?

A. Yes, she was off the reef; that is right. [45]

Q. What did you then do with your boat?

A. We went out looking for fish, for sardines. We resumed our fishing for the night.

Q. Was there time enough left that night to continue fishing in that vicinity, in that area?

A. Well, I don't just exactly remember what time the moon came up, or whether it was all night darkness, or what it was, but I believe we looked for fish after that. And if I am not mistaken, I think we went to San Pedro after midnight.

Q. And were there any other boats around in the vicinity of the Pioneer and the North Queen, outside of
~~from~~ your boat?

A. Well, there was a lot of boats around, fishing boats.

Q. How far away?

A. They were out, but in the same vicinity where we was—only three or four miles out, looking for sardines, scattered all over the Coast there.

There was one boat that came in there just after the Pioneer, just about when he was towed off, but I don't recall the name. But the boat just came in there when he was towed off.

Q. How close to the Pioneer did you go?—can you estimate?

A. It is pretty hard to say. I figure we was 100 or 150 feet. It is hard to say, offhand. [46]

Q. And that was about the same distance out that the North Queen was? A. Approximately, yes.

Q. You stated that you offered to assist in towing the Pioneer? A. Yes.

Q. Did you get any response to that offer?

A. I did.

Q. What was the response?

A. They said if the North Queen could not pull the Pioneer off the rocks that we could put in there, and the Sunlight could assist, both boats pulling it off; because it was the matter of the tide going out, and if the tide went out any further the Pioneer—I think it would be stranded there for a while longer. I definitely remember the tide was going out.

Q. Did you have any line aboard that would have been suitable for assisting the Pioneer?

A. I did. I had a 5/8ths inch cable.

Q. How long? A. Oh, I had about 450 feet.

Q. Did your boat have a towing bitt?

A. It has a regular towing bitt.

Q. Located where?

A. Amidships, behind the pilot house.

Q. In your opinion, from your familiarity with the Sunlight, was she capable of rendering assistance to the Pioneer in pulling her off the strand?

A. We were. [47]

Q. In standing by were you doing so in order to render assistance, if any assistance was requested by the Pioneer? A. We were standing by, yes.

Q. You were standing by for that purpose?

A. Yes. If one boat couldn't pull him off, the two of us might.

Mr. Bucey: That is all.

(Deposition concluded.)

ANDREW JONCICH,

called as a witness on behalf of Claimants, pursuant to stipulation and advance time of taking deposition hereto attached, being first duly sworn, testified upon oath by deposition as follows:

Direct Examination

By Mr. Bucey:

Q. Will you state your name, please?

A. Andrew Joncich.

Q. What is your age? A. Twenty-eight.

Q. Where do you reside?

A. Everett, Washington.

Q. State whether or not you have any interest in the motor vessel Sunlight.

A. I have a half interest.

Q. Were you on board that vessel on January 9, 1947? [48] A. Yes.

Q. How many men were on board the boat at that time, if you recall?

A. There were ten, and myself, was eleven.

Q. What were you and the other members of the crew and the vessel engaged in doing?

A. Sardine fishing.

Q. In what area was that?

A. As far as the area is concerned, I do not know.

Q. In fishing for sardines, what time do you fish for them? A. It night time.

Q. Does that fishing have to be at any particular time of night? A. It has to be a dark night.

Q. Was this night I have spoken of a dark night?

A. It was.

Q. Did you learn anything that evening about some distress call coming over the radio telephone?

A. No; I did not.

Q. Do you recall on that evening your vessel going to the vicinity of where some boat was stranded?

A. Yes; I remember that.

Q. Do you recall the name of that boat?

A. That was the Pioneer.

Q. How close to the Pioneer, where she was stranded, did your [49] boat go, if you recall?

A. That is hard to say. It is hard to judge how far it was. The Skipper knows more about how far it was than I do.

Q. Was there any other boat there when you arrived there? A. There was the North Queen.

Q. The North Queen was there? A. Yes.

Q. How close to the North Queen did you go?

A. We was approximately the same distance he was.

Q. Approximately alongside of it? A. Yes.

Q. Do you know when your boat started to go to this stranded vessel?

A. I don't know. I don't remember the time.

Q. Were you aware at that time that she was heading for some boat in distress? Were you told that?

A. I was up on the mast looking for fish, and I saw them heading for a light towards the beach, and then my brother told me to come down, because we were going over to the Pioneer. That is the only time I knew what was happening.

Q. About how long do you think it took you to get to the Pioneer, when you started in that direction?

A. I didn't even think how long it took, as far as that goes. [50]

Q. When your vessel arrived in the vicinity of the North Queen and the Pioneer, did you notice what the North Queen was doing?

A. He had a tow-line out when we came.

Q. Had a tow-line on the Pioneer? A. Yes.

Q. Did you observe whether or not the North Queen was pulling on the Pioneer?

A. He was pulling, and the cable snapped—the first time I noticed.

Q. Was it made fast again to the Pioneer?

A. Yes, sir; it was.

Q. Did you observe any further pulling by the North Queen?

A. The only pulling was pulling him off the rocks.

Q. I am not sure that you understood my question. What I meant by that was, after he made fast again did he pull? A. Yes.

Q. Did you make or hear any effort made by anyone on your vessel to assist in pulling the Pioneer?

A. Yes; I did.

Q. Who made that?

A. My brother, John Joncich.

Q. Did you hear what response was made to that?

A. Yes. He said to stand by, and if the North Queen couldn't do it themselves we would help them. [51]

Q. Do you know whether or not your boat had any line on board suitable for assisting in towing or pulling?

A. Yes, sir.

Q. What kind of a line was that?

A. It was a cable.

Q. Do you know the size of it?

A. It was 5/8ths inch.

Q. Do you know about the length of it?

A. It was about 450 feet.

Q. After that response was made did your vessel remain near by, alongside the North Queen?

A. You mean after the Pioneer asked us to stand by?

Q. Yes. A. We stayed by them, yes.

Q. Did you observe how the North Queen was pulling on the Pioneer?

A. It was pulling towards the sea.

Q. Did you observe whether they pulled straight out or whether they pulled sideways, one way and then the other?

A. Well, the boat was—it was facing in towards the beach, and it was pulling on the angle, stern out.

Q. The pulling by the Pioneer was in that direction?

A. Yes.

Q. Out towards the sea? [52]

A. Yes; out towards the sea.

Q. As far as you observed, did it continue pulling just that way? A. Yes.

Q. Did you observe whether or not the North Queen pulled the Pioneer off her strand?

A. Yes; he pulled it off.

Q. Was she pulled out free?

A. It was pulled out free from the rock.

Q. Did the Sunlight stand by during all that time?

A. The Sunlight stood by all the time, until the boat was pulled off the rock.

Q. After the Pioneer was pulled off the strand did you observe where she went, or where the North Queen went? A. No; I did not.

Q. Were both boats still in that vicinity when you left?
looked?

A. They were both there when we left.

Q. What did you proceed to do then with your boat?

A. We proceeded to resume fishing.

Q. Do you recall whether you did some more fishing that night?

A. I imagine we did. I could not recall how long it was.

Q. During this time that you proceeded to where the Pioneer and North Queen were, and during the time you were standing by, until the Pioneer was pulled off, what was the condition [53] of the sea?

A. It was a very light sea.

Q. Was there any swell?

A. There wasn't much swell at all. The boat was rolling very gently. She was rolling quite a bit at times, in the rough.

Q. You mean the Pioneer?

A. Yes, the Pioneer.

Q. You have referred to the swell as a light, gentle swell?

A. Yes.

Q. Was there any wind?

A. There was no wind that night.

Q. What was the visibility?

A. It was very clear.

Q. I think you have stated the moon was not shining that night?

A. No, it was not.

Q. Did you observe whether your boat when it went in to the vicinity of the North Queen got into kelps?

A. No; we just came to the edge of it; just as close as we could, that is all.

Q. Did you observe whether the North Queen was in among the kelp?

A. No; he was right on the edge of it, as close as we came to the Pioneer. [54]

Q. Do I understand you that the North Queen was not among the kelp?

A. Not that I remember; no.

Q. Did you observe whether there was kelp between the North Queen and the Pioneer?

A. In my brother's spotlight around there it was between us and the Pioneer.

Q. Do you have any idea how long it was between the time when the tow-line broke and the time when they re-secured it?

A. No, I couldn't say exactly what it was.

Q. Would you say it was ten or fifteen minutes?

A. When the line was broken, you mean, until he put the next line on?

Q. That is right.

A. Oh, I don't know. Maybe fifteen minutes or so, I guess. He couldn't get any line on it.

Q. How did they get from the North Queen to the Pioneer?

A. There was a little skiff which they had on the Pioneer. They came out and got the line.

Q. How long would you estimate that the Sunlight was standing by in the vicinity of the North Queen before the Pioneer was pulled free?

A. I imagine it was at least around an hour and a half.

Q. You think it was that long? [55]

A. I think it was about that long.

Q. Is that just an estimate?

A. That is an estimate, yes.

Q. That you make now? A. Yes.

Q. Did you take any note of the time?

A. No; I didn't take any notice at all. I know there was a lot of monkeying around, or something like that, but I never thought about it.

Q. Do you know what time it was when you first started from where you were fishing in towards the Pioneer? A. No; I don't know.

Q. Do you know what time it was you left there to go back fishing?

A. No. I didn't notice that, either.

Q. After you returned to fishing did you notice whether there were other boats fishing around in that vicinity?

A. After we resumed fishing, you mean?

Q. Yes.

A. There were boats out there, yes.

Q. Do you know how long you continued fishing after you resumed? A. I can't remember.

Mr. Bucey: I think that is all.

(Deposition concluded.) [56]

LLOYD JUDY,

called as a witness on behalf of Claimant, pursuant to stipulation and advanced time of taking deposition hereto attached, being first duly sworn, testified upon oath by deposition as follows:

Direct Examination

By Mr. Bucey:

Q. Your name is Lloyd Judy?

A. That is right.

Q. How old are you? A. Thirty-eight.

Q. Where do you reside?

A. Everett, Washington.

Q. Were you on the fishing vessel Sunlight on the afternoon and evening of January 9, 1947?

A. I was.

Q. In what capacity were you on that vessel?

A. Engineer.

Q. What kind of power does that vessel have?

A. 250 horsepower, Atlas, diesel.

Q. How long had you acted as engineer on that vessel?

A. From October 31st, or so, of 1945, up until now.

Q. What was the condition of those engines?

A. Very good condition. [57]

Q. While you were on duty were you stationed in the engine room? A. Part of the time, yes.

Q. On that afternoon or evening did you learn of any radio telephone distress call being received on your vessel? A. No.

Q. Do you recall your vessel going to the assistance of another vessel that was stranded?

A. I don't recall so going. All I know is when we arrived.

Q. Did you go out on deck after you arrived?

A. That is right.

Q. What vessel was the one that was stranded?

A. The Pioneer.

Q. Was there any other vessel there when you arrived?

A. The North Queen.

Q. When you arrived there what, if anything, was the North Queen doing?

A. She had a line on the Pioneer. I don't recall whether she was pulling on her or not. Anyhow, the line was between the Pioneer and the North Queen.

Q. Did you observe the North Queen pulling at any time on the Pioneer?

A. I went down in the engine room, and when I came back up again I just got up there in time to see the line snap between the North Queen and the Pioneer. [58]

Q. And then what was done?

A. They replaced the line. They secured it over again. I don't remember now just what they did.

Q. Did you observe them pulling on her after that?

A. That is right.

Q. Did you observe her pull the Pioneer off?

A. Yes. I was on deck then.

Q. Where was your vessel during that time?

A. We were the same distance from the Pioneer as the North Queen. We stayed about that far offshore.

Q. About how far from the North Queen?

A. Sometimes we were closer, and sometimes we were a little farther. We had to keep maneuvering to get out of the way.

Q. Were you within 100 feet of the North Queen?

A. Yes, at times.

hear

Q. Did you ~~have~~ anyone on your vessel make any offer to the Pioneer to assist?

A. Yes. I heard our Skipper tell the man—

Q. (Interposing) That was Mr. John Joncich?

A. Mr. John Joncich. I heard him tell the man in the Pioneer skiff that we would give them a line if they wanted it.

Q. Did you hear what was said in response to that?

A. They went over towards their boat, and then they hollered [59] back and told us if the North Queen couldn't make it they would take a line from us, also.

Q. Do you know whether or not the Sunlight had any suitable line on board?

A. We had our tow-cable.

Q. What kind of a cable was that?

A. A five-eighths inch cable

Q. About what length?

A. That you couldn't prove by me. I am the engineer.

Q. Where was that line?

A. It was on a reel on top of the pilot house.

Q. After the Pioneer was pulled off her strand did you observe whether she left there, or what she did?

A. We didn't stay there. We left as soon as she came afloat. We pulled out right away.

Q. Did you observe whether she was entirely free of the strand, in deep water?

A. She was free of the strand and in deep water, and out past the kelp into deep water.

Q. Did you observe whether there was kelp around the Pioneer?

A. Yes; there was kelp between us and the Pioneer.

Q. Did the Sunlight get into the kelp?

A. No, not that I know of.

Q. Did you observe whether the North Queen got into the kelp?

A. No, I don't know whether she did. She may have when she [60] received the tow-line, but while I was there I never seen her in the kelp.

Q. Have you ever had any experience in towing, or tug operations? A. Yes.

Q. In what capacity? A. As engineer.

Q. On tugs? A. That is right.

Q. In your opinion was the Sunlight, with her equipment and her power, capable of rendering assistance to the Pioneer? A. Yes.

Q. Do you recall how long it was between the time the Sunlight arrived in the vicinity of the North Queen and the Pioneer, and the time when the Pioneer was pulled free?

A. No, I do not. I never kept track of the time at all. As far as how long it took, I couldn't say one way or another. It seemed like it was a long time, but whether it was 45 minutes or two hours, I couldn't say.

Q. When the Sunlight left that vicinity was the North Queen and the Pioneer—were they still there?

A. They were, yes.

Q. Was the Pioneer floating free in deep water?

A. Yes, sir. [61]

Q. What did the Sunlight do after leaving there?

A. We went back out and resumed our fishing.

Q. Do you know how long you continued fishing that night?

A. No, I do not. I never paid any attention to it. I am up until the engines stop when we hit alongside the dock, so I don't pay any attention to it at all. I don't fish outside, anyhow. My job is in the engine room, and I do not pay any attention to that at all.

Mr. Bucey: I think that is all.

(Deposition concluded.) [62]

In the District Court of the United States, Southern District of California, Central Division

In Admiralty. No. 6897-Y

Andrew Xitco, Jr., Libelant, vs. Oil Screw "Pioneer",
her tackle, apparel, and equipment, Respondent.

State of Washington)
: ss.

County of King.)

I hereby certify that beginning on the 29th day of August, 1947, before me, Earl R. Field, a Notary Public in and for the State of Washington, residing at Seattle, Washington, at Court-Room No. 2, Snohomish County Courthouse, at Everett, Washington, (the time of taking depositions having been advanced by oral stipulation of Proctors for the respective parties from the date of September 2, 1947, to suit the convenience of proctors and the witnesses, to be taken at the same place and before the same Notary Public), beginning at the hour of 2:00 o'clock p. m., the said depositions being taken before Earl R. Field, a Notary Public in [63] and for the State of Washington, residing at Seattle, King County, Washington, named in said attached stipulation; and

Gerald H. Bucey, Esq. (of Messrs. Merritt, Summers & Bucey), appearing for Messrs. McCutcheon, Thomas, Matthew, Griffiths & Greene), appearing as Proctor for and on behalf of Claimants; and

There being no appearance by Proctor or Attorney or Counsel for and on behalf of Libelant; and

The above named witnesses being by me first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, and being carefully examined,

deposed and said as in the foregoing annexed depositions set out.

I further certify that the taking of said depositions was begun on the 29th day of August, 1947, and completed upon the same date.

I further certify that the said depositions have been reduced to typewriting under my personal supervision, and that the reading over by or to the said witnesses of their said depositions, and the subscriptions of the said witness to their said depositions, were by stipulation of Proctors for the parties and by themselves, the witnesses, expressly waived, and the said depositions have been retained by me for the purpose of sealing up and directing the same to the Clerk of the Court, as required by law. [64]

I further certify that I am not Proctor for nor or counsel or attorney to either or any of the parties named herein, nor am I interested in the event of the cause.

I further certify that the notarial and stenographic fees for taking said depositions, \$39.50, have been paid to me by the Claimants, and the same are just and reasonable.

Witness my hand and official seal at Seattle, King County, Washington, this 9th day of September, 1947.

(Seal)

Earl R. Field

Notary Public in and for the State of Washington,
residing at Seattle, Wash.

Case No. 6897-M. Xitco vs. "Pioneer". Respondent's Exhibit C. Date 10-31-47. No. C in Evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. E. M. Enstrom, Jr., Deputy Clerk.

[Endorsed]: Filed Sep. 17, 1947. Edmund L. Smith, Clerk. [65]

[Minutes: Saturday, November 1, 1947]

Present: The Honorable Paul J. McCormick, District Judge.

Further trial; Herbert R. Lande, Esq., present for libelant; Philip K. Verleger, Esq., present for respondent, and both sides answering ready, Court orders trial to proceed.

At 10:25 A. M. Attorney Lande argues to the Court for libelant. Attorney Lande states for the record that any award will be divided 39% to the boat; and 61% to the crew of eleven men, in equal amounts.

At 11:00 A. M. Attorney Verleger argues to the Court for respondent. At 11:30 A. M. Attorney Lande argues further for libelant in reply. At 11:38 A. M. Court makes statement and finds in favor of libelant a salvage award in the sum of \$12,000.00, and orders Attorney Lande to prepare findings of fact, conclusions of law and decree in accordance with Court's opinion within five days. [66]

[Title of District Court and Cause]

Honorable Paul J. McCormick, Judge Presiding

REPORTER'S TRANSCRIPT OF OPINION OF
THE COURT.

Los Angeles, California, Saturday, November 1, 1947

Appearances:

For the Libelant: Herbert R. Lande, Esq., 413 West Seventh Street, San Pedro, California.

For the Respondent: McCutchen, Thomas, Matthew, Griffiths & Greene, by Philip K. Verleger, Esq., 704 Roosevelt Building, Los Angeles, California. [68]

Los Angeles, California, Saturday, November 1, 1947.
10 A. M.

(Opening argument on behalf of libelant by Mr. Lande.)

(Argument on behalf of respondent by Mr. Verleger.)

(Closing argument on behalf of libelant by Mr. Lande.)

The Court: I think I can probably decide the issue now, gentlemen, with more security than by taking it under advisement.

The principles in these salvage cases are pretty well settled by the Federal Appellate Courts and the Supreme Court of the United States. They bring into play the question of discretion, and it is rather a heavy burden that is imposed upon the Admiralty Court. I am speaking now of the court of the first instance. We must first have in mind that the measure of an award is probably a bounty, it is a satisfaction for meritorious service performed under the perils of the sea and it is also the

degree of probability that ensues in the specific case under consideration.

We must so far as we can eliminate pure conjecture, because if we proceed on the theory of speculation or possibilities there would be no standard in admiralty suits where salvage was the issue. Here we had, according to the undisputed evidence, a calm or a relatively calm sea. The operation occurred during a month when weather is somewhat uncertain. I am saying that because I think the court has the [69] right to consider the history of the times, and to use its own knowledge of such matters, so that there could not be any definiteness with reasonable certainty as to what would ensue toward the latter hours of the night in question. The same condition of weather might have continued. On the other hand, there might have been some disturbances either by wind or wave that would have aggravated the situation. There was great peril there, not only because of the position of the "Pioneer", but because of the kelp that, according to the undisputed evidence, was present in large area, which was a serious interference with maneuvering ships of the size of the two ships in question. So that we have the peril of a ship that was in extremis. She was on the rocks. Whether she was fast or whether she was extricable is a pure matter of conjecture. The fact is she was extricated by the efforts of the libelant.

We must bear in mind that the libelant vessel was not equipped for salvage purposes. She was a fishing boat, and that factor should not be lost sight of in evaluating the type of service which she rendered to the disabled ship. She responded to the call, and in doing so, while probably not placing herself in a great peril on account of the distance separating the two vessels at the time

of the first movement, there was a good deal of danger to be apprehended in going close to the obstacles in the pathway, which had caused the [70] "Pioneer" to become fixed on the rocks.

The appearances, as they presented themselves to the "Pioneer", were such as to require immediate action, and the equipment that was available, the gear and the other appliances that were aboard the ship, had to be utilized in the best way possible, or at least in the best way that good seamanship would prompt those who were navigating the "North Queen".

The first movement was unsuccessful and, in my judgment, it is there that the high degree of skill has been established. The quickness with which the line was made safe for the purposes and the experience of the man who directed the operations for the second effort to extricate the "Pioneer" were of a very high order, in my judgment. They showed exceptional skill, according to the evidence, based upon experience of a high type of value in a situation such as that which confronted the "Pioneer" at the time. I think the maneuver in utilizing the principle of the lever showed real seamanship in extremis. If the pull had been straight, as it probably was primarily, there is a good deal of doubt under the evidence as to whether the operation would have been as successful. So that there was this high degree of skill manifested after the line parted, which, in my judgment, shows an exceptional skill in this operation.

Now, as to whether or not the operation was the sole [71] causative factor in floating the "Pioneer" so that she could continue on her way under her own power I don't know. It is rather a guessing matter. I doubt the security of the evidence that indicates that the bow of the

"Pioneer" was elevated five feet. I think it may have been that it appeared that way, but I doubt whether there could have been any movement on the "Pioneer" of any kind from the bridge if the bow had been up five feet. I think the other estimate is about as unsafe to adopt,—one foot. It was somewhere between those two, I think. You cannot measure those things with nicety.

The "North Queen" was endeavoring to salvage the ship which was disabled, and those who operated her were not concerned with measurements, excepting in so far as they would illustrate to a mariner, a seafaring man, whether his movements were too unsafe to risk. But whether it was five feet or one foot, I believe it was somewhere between those two.

I feel that the buoyancy of the sea itself was a contributing factor, but the movement of the leverage maneuver was, I think, the prime cause of extricating the "Pioneer". I believe the result was partially assisted by the buoyancy, by the movement of the sea itself, during the tide period that was involved in the movement. How much each contributed it is difficult to say. I think the major factor was the maneuvering of the vessel, the salvor, and that had it not been [72] for that movement the consequences that ensued to the disabled vessel might have been very serious. How serious I think is a pure matter of conjecture.

The period that was occupied in the operation is material, of course. It was somewhere between one hour and an hour and a half, and it engaged the attention of a large ship and a crew of eleven men, all of whom were participating in the salvage episode, and, as I say, particularly one, as the court has indicated, was especially valuable in the project.

So far as the loss of fish is concerned, the evidence there is a little nebulous. There is no evidence that fish were running in large quantities; in fact, I do not believe there was any evidence on that point at all, as to the fishing probabilities or potentialities that night. Both sides seemed to feel a little bit ticklish about that matter for some reason. I don't know what it was. In any event, there was no evidence excepting the fact that an inference is fair, I think, that a fishing boat of that size with a crew of eleven men, going down in those waters to fish on lays, would not have been out less they felt there was a fair prospect of a catch that night. The catch was abandoned because of the desire to assist in saving this ship after she had been disabled. I do not believe there is anything definite there upon which we can make any estimate with any security. It is doubtful whether we can say that they would have caught 190 [73] tons of sardines at \$40 a ton. They probably would have caught some fish and would have sold the fish which they caught, but the estimate in money, I mean in a specific amount of money, is rather insecure.

Some argument has been made about estimating awards on percentage bases. The more authoritative Federal Courts recently have looked with some disfavor upon that method. Take these large values of ships these days, or even take the smaller ships of little value, it is rather an insecure way to attempt to estimate the salvage value in an admiralty case on any such basis. It should not be left out of consideration, and is not left out of con-

sideration, but to say that the award should be 10 or 15 or 25 per cent, where the ship has been saved and where the damage has been considerable, in this case approximately \$16,000 to repair the keel and the other appliances of the ship, I do not believe should be done. I am not making the award either upon the possibility of there being a catch of the entire 190-ton capacity of the ship, nor upon the percentage of the value of either or both ships. I am not leaving those elements out of consideration, but I am not making the award essentially upon either of them.

With reference to the testimony as to the value of the "Pioneer", I think Mr. Scheibe's testimony on that is to be rather carefully surveyed. He fixed a replacement value, a new replacement value of about \$125,000, and then gave some formula [74] which he used which would bring it down to a value of approximately \$100,000. I don't know whether he included in that the value of the net at \$15,000. I don't believe he did. My estimate of the value would be approximately \$129,000, allowing a \$15,000 value for the fish net. The net was in serious danger of being destroyed because of the necessities of the case, and coming back to the feature of the case which most impressed the court, the activities of the seamen after the line parted, unless there had been a high degree of seamanship and of navigation in maneuvering the vessel—the captain is entitled to share the credit in that—there was danger of the net being lost or at least badly damaged. It was the maneuvering of the vessel in

a way to give leverage so that the greatest amount of beneficial force could be used on the disabled vessel, and at the same time taking proper precautions to not submit the salvor to an unusual risk. It is those two features which I think bring the case up into the dignity of a high degree of skill.

Taking all of the factors into consideration, it seems to me that an award of \$12,000 would be adequate. I think the respondent is way too low on \$1,000, and I think the libelant is rather high on \$17,500.

You will prepare findings and an award accordingly, Mr. Lande, for \$12,000 and costs. [75]

CERTIFICATE

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 10 day of November, A. D. 1947.

MARIE G. ZELLNER

Official Reporter

[Endorsed]: Filed Nov. 20, 1947. Edmund L. Smith, Clerk. [76]

[Title of District Court and Cause]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled cause came on regularly for trial on October 31, 1947, in the above entitled court, Honorable Paul J. McCormick, United States District Judge presiding; Herbert R. Lande appearing as proctor for libelant, and McCutchen, Thomas, Matthew, Griffiths & Greene, by Harold A. Black and Philip K. Verleger, appearing as proctors for the respondent and claimants; and evidence oral and documentary having been taken and received, and the cause having been submitted for decision, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

I.

That it is true that at all times mentioned herein, libelant Andrew Xitco, Jr., was the master of the American oil screw vessel called the "North Queen"; and was and is a resident [77] of the Southern District of California, Central Division.

II.

That it is true that the "North Queen" is an oil screw vessel of one hundred fifty tons gross, and length of eighty-two feet; and that her value, including net, at the time of the salvage services hereinafter mentioned was \$135,000.00.

III.

That it is true that the "North Queen" was owned by the libelant, 25%; A. K. Anderson, 25%; Arne Strom, 25%; and Haldor Dahl, 25%; that the crew of said vessel consisted of libelant as master and ten other fishermen.

IV.

That it is true that the oil screw "Pioneer", official number 246153, is an American fishing vessel of a type known as a purse seiner; that said vessel is of 183 tons gross, 99 tons net, 86.5 feet in length, and was built in 1944; that the value of said vessel prior to the stranding on January 9, 1947, was \$114,000.00 and that said vessel carried a net of the value of \$15,000.00.

V.

That it is true that on the night of January 9, 1947, the respondent vessel "Pioneer" was sailing in waters off the coast of Southern California, that between 6:30 P. M. and 7:00 P. M. of said night, the said vessel was in waters off Laguna Beach, California; that at said time and place, said vessel was navigating near the shore and ran upon the submerged rocks known as Two Rock Point and became stranded; that said vessel thereupon immediately sent out a distress call for help over her radio; that the said vessel was then and there in peril in extremis, stranded on the rocks and surrounded by kelp; that her own means could not remove her from the strand; that immediate aid was required. [78]

VI.

That it is true that the master of the "North Queen" heard the distress call of the respondent vessel, responded thereto and immediately went to her aid; that the "North Queen" arrived at the place where the "Pioneer" was stranded at about 7:30 P. M.; that at said time, respondent vessel was in distress and danger in extremis; that upon the arrival of the "North Queen", the libellant maneuvered her close to the place where the "Pioneer" was

stranded, and at that time the master of the "Pioneer" called to the libelant and asked him to take a cable from the "Pioneer" and endeavor to pull that vessel off the rocks; that the libelant agreed to this, and a skiff came from the "Pioneer" carrying a manila line to the "North Queen"; that the manila line was attached to the steel cable from the "Pioneer"; that the "North Queen" took the cable from the skiff and pulled the line and cable aboard the "North Queen", and secured the cable to the main bitts aft; that in order to exert a pull on the cable, it was necessary to raise the cable over the platform and nets on the stern of the "North Queen", and that accordingly a line from the boom of the "North Queen" was used to raise the cable to sufficient height for clearance; that the "North Queen" thereupon began to pull and strain on the cable in an endeavor to free the "Pioneer"; that very shortly the cable parted, but that the line from the boom to the cable was released in time so as to hold the end of the cable and still allowing sufficient play so as not to bring down the rigging of the "North Queen"; that the said cable was again fastened to the bitts of the "North Queen" and the libelant and crew of the "North Queen" again endeavored to free the "Pioneer"; that during the next half hour, by the use of great skill and ingenuity, the master and crew of the "North Queen" pulled the "Pioneer" free of the rocks upon which she was stranded. [79]

VII.

That it is true that the respondent vessel "Pioneer" was stranded on the rocks in such a manner as to be in great peril from the sea and elements and was in the position of a ship in extremis.

VIII.

That it is true that the salvage services rendered by the "North Queen" and her crew and master were highly skillful and of a very high order of merit; that their manner of working the vessel off the rocks showed real seamanship in an emergency and exceptional skill based on experience of a high type; that the efforts of the "North Queen" and crew were the prime and major factor which resulted in the freeing and extricating of the "Pioneer" from the rocks.

IX.

That it is true that the cost of repair to the "Pioneer", arising from the stranding, was \$16,432.20.

X.

That it is true that the salvage services of the "North Queen", her master and crew, to the "Pioneer" were and are of a value of \$12,000.00.

CONCLUSIONS OF LAW

I.

That the libelant is entitled to recover of and from the respondent and claimants, the sum of \$12,000.00, with his costs herein.

Dated: November 12th, 1947.

PAUL J. McCORMICK

United States District Judge

Receipt of a copy hereof, and service thereof, on November 3, 1947, is hereby acknowledged. McCutchen, Thomas, Matthew, Griffiths & Greene, by Philip K. Verleger.

[Endorsed]: Filed Nov. 12, 1947. Edmund L. Smith, Clerk. [80]

In the District Court of the United States
Southern District of California
Central Division

In Admiralty. No, 6897-M

ANDREW XITCO, JR.,

Libelant,

vs.

Oil Screw "PIONEER", Her Tackle, Apparel, and
Equipment,

Respondent.

JUDGMENT

The above entitled cause came on regularly for trial on October 31, 1947, in the above entitled court, Honorable Paul J. McCormick, United States District Judge presiding; Herbert R. Lande appearing as proctor for libelant, and McCutchen, Thomas, Matthew, Griffiths and Greene, by Harold A. Black and Philip K. Verleger appearing as proctors for the respondent and claimants; and evidence oral and documentary having been taken and received; and the cause having been submitted for decision; and written findings of fact and conclusions of law having been made and filed herein;

Now, Therefore, It Is Ordered, Adjudged and Decreed that the libelant, Andrew Xitco, Jr., do have and recover from the respondent vessel "Pioneer", her tackle, apparel and equipment, and the claimants Marion Joncich, Joe C. Mardesich and Antoinette Bogdanovich, jointly and severally, the sum of \$12,000.00; plus [81] costs in the sum of \$40.00.

Dated: November 12th, 1947.

PAUL J. McCORMICK

United States District Judge

Receipt of a copy hereof, and service thereof, is acknowledged November 3, 1947. McCutchen, Thomas, Matthew, Griffiths and Greene, by Philip K. Verleger.

Judgment entered Nov 12, 1947. Docketed Nov. 12, 1947. C. O. Book 46, page 768. Edmund L. Smith, Clerk; by E. M. Enstrom, Jr., Deputy.

[Endorsed]: Filed Nov. 12, 1947. Edmund L. Smith, Clerk. [82]

[Title of District Court and Cause]

PETITION FOR APPEAL

To the Honorable Paul J. McCormick, Judge of the United States District Court, Southern District of California, Central Division:

Marion Joncich, Joe C. Mardesich, and Antoinette Bogdanovich, your petitioners, claimants herein, hereby pray that they may be permitted to take an appeal from the final decree entered herein on the 12th day of November, 1947, and from each and every part of said decree. Said claimants further pray that they may be permitted to take an appeal from the order entered herein on November 1, 1947, in the Civil Docket of said court, and in the minutes of said court, wherein it was ordered that libelant recover as salvage the sum of Twelve Thousand (\$12,000.00) Dollars. [83]

Your petitioners also desire that the bond for costs on appeal and the supersedeas bond filed herewith be

approved by this court, and that execution of the aforesaid final decree and the aforesaid order be stayed, pending the determination of the appeal herein.

Dated at Los Angeles, California, this 13 day of January, 1948.

McCUTCHEN, THOMAS, MATTHEW,
GRIFFITHS & GREENE
HAROLD A. BLACK
PHILIP K. VERLEGER

[Endorsed]: Filed Jan. 13, 1948. Edmund L. Smith,
Clerk. [84]

[Title of District Court and Cause]

ASSIGNMENTS OF ERROR

Marion Joncich, Joe C. Mardesich, and Antoinette Bogdanovich, claimants herein, hereby assign the following errors in the records and proceedings in this cause:

I.

That the court erred in finding that following the stranding, the respondent vessel Pioneer was "in peril in extremis".

II.

That the court erred in finding that following the stranding, the respondent vessel Pioneer's own means could not remove her from the strand.

III.

That the court erred in not finding and in not considering in determining the award that the Pioneer stranded very shortly [85] after low tide; that when the

Pioneer was stranded the waterline at her bow was approximately one foot out of water and the waterline at her stern about even with the water; that the weather was calm and that there was approximately a 5-foot rise of tide to be anticipated; that the Pioneer was not pounding or leaking and her means of propulsion were entirely sound and that it was likely that without assistance she would have succeeded in freeing herself before high tide on the night of her stranding.

IV.

That the court erred in that it did not find and did not consider in determining the award that it was likely that the Pioneer would free herself without assistance, except the assistance of the rising tide.

V.

That the court erred in finding and in considering, in determining the award, that the Pioneer was stranded on the rocks in such a manner as to be in great peril from the sea and elements.

VI.

That the court erred in that it did not find, and did not consider in determining the award that the Pioneer was not in immediate danger, but would have been in more serious danger if the weather took a change for the worse.

VII.

That the court erred in finding, and in considering, in determining the salvage award, that the salvage services rendered by the North Queen, her crew and master, were highly skillful.

VIII.

That the court erred in finding, and in considering in making the award, that the manner in which the North Queen and her crew and master worked the Pioneer off the rocks showed real [86] seamanship under an emergency and exceptional skill based on an experience of a high type.

IX.

That the court erred in finding, and in considering in making the award, that the salvage services performed by the North Queen, her crew and master, were of a very high order of merit.

X.

That the court erred in that it did not find and did not consider in making the award that the services rendered by the North Queen, her crew and master, did not call for or involve exceptional skill or heroism.

XI.

That the court erred in that it did not find or consider in determining the award, that the assistance rendered by the North Queen was rendered without substantial peril to, expense to, or sacrifice by the North Queen, her master or crew.

XII.

That the court erred in considering in determining the award, and in holding that the efforts of the North Queen, her crew and master, were the prime and major factor which resulted in freeing and extricating the Pioneer from the rocks.

XIII.

That the court erred in that it did not find or consider in determining the amount of the award that the rise in tide was the principal factor enabling the North Queen to release the Pioneer from the rocks.

XIV.

That the court erred in that it did not find or consider in determining the award that the vessel Sunlight was standing [87] by ready and willing to assist the Pioneer.

XV.

That the court erred in that it did not find or consider in determining the amount of the award that assistance other than the North Queen was available to the Pioneer.

XVI.

That the court erred in that it did not find or consider in determining the award that the Pioneer was close to port where further assistance could have been obtained.

XVII.

That the court erred in that it did not find or consider in determining the amount of the award that the North Queen was exposed to little or no danger in assisting the Pioneer.

XVIII.

That the court erred in that it did not find or consider in determining the amount of the salvage award that the services of the North Queen were performed without cost or expense, loss or damage, or substantial risk to the North Queen, its owners, master or crew.

XIX.

That the court erred in that it considered in determining the amount of the award that there was some probability of loss of fish to the North Queen, her owners, crew and master, resulting from the assistance rendered to the Pioneer.

XX.

That the court erred in finding that the salvage services of the North Queen, her master and crew, to the Pioneer, were and are of the value of \$12,000.00.

XXI.

That the court erred in adjudging, ordering and decreeing [88] that libelant recover from the respondent vessel Pioneer the sum of \$12,000.00.

XXII.

That the court erred in decreeing that libelant recover from claimants Marion Joncich, Joe C. Mardesich, and Antoinette Bogdanovich, jointly and severally, the sum of \$12,000.00, plus costs, for the reason that said claimants were not sued in personam and did not appear in personam.

Dated: January , 1948.

McCUTCHEN, THOMAS, MATTHEW,
GRIFFITHS & GREENE
HAROLD A. BLACK
PHILIP K. VERLEGER

[Endorsed]: Filed Jan. 13, 1948. Edmund L. Smith,
Clerk. [89]

[Title of District Court and Cause]

ORDER ALLOWING APPEAL

The Petition of Marion Joncich, Joe C. Mardesich, and Antoinette Bogdanovich, for an appeal from the final decree entered in the above entitled cause on the 12th day of November, 1947, and from the order entered in th above entitled cause on November 1, 1947, in the Civil Docket and in the minutes of said court, wherein it was ordered that libelant recover as salvage the sum of Twelve Thousand (\$12,000.00), is hereby granted and the appeal is allowed.

It Is Further Ordered, that a certified copy of the record herein be forthwith transmitted to the United States Circuit Court of Appeals for the Ninth Circuit.

It Is Further Ordered that the bond for costs filed herein on January 13, 1948, be and the same is hereby approved. [90]

It is further ordered that the supersedeas bond filed herein be, and the same is hereby, approved, and that the execution of the aforesaid final decree, and of the aforesaid order, be, and is hereby stayed, pending the determination of the appeal herein.

Dated at Los Angeles, California, this 13th day of January, 1948.

LEON R. YANKWICH

United States District Judge

[Endorsed]: Filed Jan. 13, 1948. Edmund L. Smith, Clerk. [91]

[Title of District Court and Cause]

NOTICE OF APPEAL

Please Take Notice, that Marion Joncich, Joe C. Mar-desich, and Antoinette Bogdanovich, claimants in the above entitled case, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final decree entered herein on the 12th day of November, 1947, and from each and every part of said judgment; and from the order entered herein on November 1, 1947, in Civil Docket of said court, and in the minutes of said court, wherein it was ordered that libelant recover as salvage the sum of \$12,000.00 plus costs and from each and every part of said order.

Dated this day of January, 1948.

McCUTCHEN, THOMAS, MATTHEW,
GRIFFITHS & GREENE

HAROLD A. BLACK

PHILIP K. VERLEGER

Proctors for Respondent

[Endorsed]: Filed & mld. copy to Herbert R. Lande,
Atty. for Libelant, Jan. 13, 1948. Edmund L. Smith,
Clerk. [92]

[Title of District Court and Cause]

SUPERSEDEAS BOND

Know All Men By These Presents:

That Fireman's Fund Indemnity Company, a corporation, organized and existing under and by virtue of the laws of the State of California, and authorized to do a surety business in the State of California, is held and firmly bound to Andrew Xitco, Jr., in the full and just sum of \$12,000.00, to be paid to the said Andrew Xitco, Jr., or his duly designated attorney, executors, administrators or assigns; to which payment well and truly to be made we bind ourselves and administrators, jointly and severally, by these presents.

Whereas, lately, at a District Court of the United States for the Southern District of California, Central Division, in a [94] suit *depending* in said court between said Andrew Xitco, Jr., as libelant against the Oil Screw Pioneer, her tackle, apparel and equipment, respondent, and Marion Joncich, Joe C. Mardesich and Antoinette Bogdanovich, as claimants to said Oil Screw Pioneer, her tackle, apparel, and equipment, a decree was entered against the said respondent and against the said claimants, and the said claimants having filed in said court a notice of appeal, and a petition for the allowance of an appeal, to reverse the said decree in the aforesaid suit, the aforesaid appeal being directed to the United States Circuit Court of Appeals for the Ninth Circuit.

Now, the Condition of the Above Obligation Is Such, that if the said claimants shall prosecute the said appeal, to effect, and satisfy the judgment in full, together with costs, interest and damages for delay, if for any reason the appeal is dismissed or if the judgment is affirmed, and to satisfy in full any modification of the judgment and such costs, interest and damages that the Appeal Court may adjudge and award if said claimants fail to make said plea good, then the above obligation to be void; else to remain in full force and virtue.

Dated this 5th day of January, 1948.

FIREMAN'S FUND INDEMNITY COMPANY

By A. I. Stoddard

Its Attorney in Fact

State of California

County of Los Angeles—ss.

On this 5th day of Jan., 1948, before me, M. E. Beeth, a Notary Public in and for said County, State aforesaid, residing therein, duly commissioned and sworn, personally appeared A. I. Stoddard, known to me to be the person whose name is subscribed to the within instrument as the attorney in fact of Fireman's Fund Indemnity Company and acknowledged to me that he subscribed the name of Fireman's Fund Indemnity Company thereto as principal, and his own as attorney in fact.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, at my office in the said County

of Los Angeles the day and year in this certificate first above written.

(Seal)

M. E. BEETH

Notary Public in and for the County of Los Angeles,
State of California.

My commission expires March 24, 1949.

The premium charged for this bond is \$120.00 per annum. [95]

Approved this 7 day of January, 1948.

HERBERT R. LANDE

Proctor for Libelants and Respondents.

Recommended for approval as provided in Rule 8.

McCUTCHEN, THOMAS, MATTHEW,
GRIFFITHS and GREENE

HAROLD A. BLACK

PHILIP K. VERLEGER

Proctors for Claimants and Appellants.

I hereby approve the foregoing bond this 13th day of January, 1948.

LEON R. YANKWICH

United States District Judge

[Endorsed]: Filed Jan. 13, 1948, Edmund L. Smith,
Clerk. [96]

[Title of District Court and Cause]

BOND FOR COSTS ON APPEAL

Whereas claimants, Marion Joncich, Joe C. Mardesich, and Antoinette Bogdanovich, have appealed or are about to appeal from that certain final decree heretofore made and entered in the above entitled cause on November 12, 1947, and from that certain order entered on November 1, 1947, and

Whereas, Fireman's Fund Indemnity Company, a corporation, organized and existing under and by virtue of the laws of the State of California, and authorized to do a general surety business in the State of California, is held and firmly bound unto the Libellant, and unto whom it may concern, in the sum of Two Hundred Fifty and no/100 Dollars (\$250.00) for the payment of which, well and truly to be made, it does hereby bind itself, its successors and assigns, firmly by these presents, and agrees that, in case [97] of default or contumacy on the part of said appellants or of the undersigned, execution may issue against it, its goods, chattels and lands;

Now, Therefore, the condition of this obligation is such that if the above named appellants shall prosecute said appeal with effect and pay all costs which may be awarded against them as such appellants if the appeal is sustained, then this obligation shall be void, otherwise the same shall be and remain in full force and effect.

Dated at Los Angeles, California, this 5th day of January, 1948.

FIREMAN'S FUND INDEMNITY COMPANY

By A. I. Stoddard

Its Attorney in Fact

State of California

County of Los Angeles—ss.

On this 5th day of Jan., 1948, before me, M. E. Beeth, a Notary Public in and for said County, State aforesaid, residing therein, duly commissioned and sworn, personally appeared A. I. Stoddard, known to me to be the person whose name is subscribed to the within instrument as the attorney in fact of Fireman's Fund Indemnity Company and acknowledged to me that he subscribed the name of Fireman's Fund Indemnity Company thereto as principal, and his own as attorney in fact.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, at my office in the said County of Los Angeles the day and year in this certificate first above written.

(Seal)

M. E. BEETH

Notary Public in and for the County of Los Angeles,
State of California.

My commission expires March 24, 1949.

The premium charged for this bond is \$10.00 per annum.

Approved this 7 day of January, 1948.

HERBERT R. LANDE

Proctor for Libelants and Respondents

Recommended for approval as provided in Rule 8.

McCUTCHEN, THOMAS, MATTHEW,
GRIFFITHS & GREENE

HAROLD A. BLACK

PHILIP K. VERLEGER

Proctors for Claimants and Appellants

I hereby approved the foregoing bond this 13 day of January, 1948.

LEON R. YANKWICH

United States District Judge

[Endorsed]: Filed Jan. 13, 1948. Edmund L. Smith,
Clerk. [98]

[Title of District Court and Cause]

STIPULATION CONCERNING EXHIBITS

It Is Hereby Stipulated by and between the parties herto that the original exhibits filed and placed in evidence herein by the respective parties shall be forwarded to the Circuit Court of Appeals for the Ninth Circuit, and that said original exhibits may be considered by said Circuit Court of Appeals for the Ninth Circuit as part of the apostles herein. It is further stipulated that said exhibits need not be transcribed into Clerk's or Reporter's Transcripts herein.

McCUTCHEN, THOMAS, MATTHEW,
GRIFFITHS & GREENE
HAROLD A. BLACK
PHILIP K. VERLEGER

Proctors for Claimants and Appellants
HERBERT R. LANDE
Proctor for Libelant and Respondent

It is so ordered.

Dated: Feb. 6, '48.

PAUL J. McCORMICK
United States District Judge

[Endorsed]: Filed Feb. 6. 1948. Edmund L. Smith,
Clerk. [101]

[Title of District Court and Cause]

[Affidavit of Mailing of Praeceptum for Apostles, Petition for Appeal, Assignments of Error, and Order Allowing Appeal.]

[Endorsed]: Filed Jan. 15, 1948. Edmund L. Smith,
Clerk. [102]

[Title of District Court and Cause]

APPLICATION FOR ORDER ALLOWING EXTENSION OF TIME IN WHICH TO FILE APOSTLES ON APPEAL

To the Honorable the District Court of the United States in and for the Southern District of California, Central Division:

Claimants and appellants, Marion Joncich, Joe C. Mardesich, and Antoinette Bogdanovich, hereby apply for an extension of time in which to transmit the apostles on appeal in the above entitled cause to the Ninth Circuit Court of Appeals, and in which to file the said apostles with said court, to and including the 21st day of March, 1948. Said application is made on the ground that the clerk of said District Court has not yet been able to complete the preparation of said apostles. Claimants further allege in this behalf that said clerk is at present unable to complete the preparation of said apostles for the reason that the reporter's transcript has not yet been filed with said clerk; that claimants are advised that said reporter's transcript has in fact been completed but that the [106] reporter is presently holding the said transcript awaiting a convenient opportunity for the Honorable Paul J. McCormick, Judge in and for said District Court, to examine the said transcript. Claimants are further advised that the preparation of the said transcript was delayed somewhat by reason of the necessary presence of the said reporter at a trial of various causes at San Diego. The time for transmitting the said apostles to the United

States District Court presently expires February 21, 1948, and claimants believe that even if the said reporter's transcript were immediately placed in the hands of the said clerk, there would be some risk that it would not reach the clerk of the said Circuit Court of Appeals in San Francisco, California, by said date of February 21, 1948.

Dated this 19th day of February, 1948.

McCUTCHEN, THOMAS, MATTHEW,
GRIFFITHS AND GREENE
HAROLD A. BLACK
PHILIP K. VERLEGER

[Endorsed]: Filed Feb. 19, 1948. Edmund L. Smith,
Clerk. [107]

[Title of District Court and Cause]

ORDER EXTENDING TIME

It Is Hereby Ordered that claimants and appellants, Marion Joncich, Joe C. Mardesich, and Antoinette Bogdanovich may have to and including the 21st day of March, 1948, in which to transmit the apostles on appeal herein to the Ninth Circuit Court of Appeals and to file the said apostles with the said Ninth Circuit Court of Appeals.

Done this 19th day of February, 1948.

PAUL J. McCORMICK
United States District Judge

[Endorsed]: Filed Feb. 19, 1948. Edmund L. Smith,
Clerk. [108]

[Title of District Court and Cause]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 108, inclusive, contain the original Citation and full, true and correct copies of Libel in Rem for Salvage; Claim; Answer to Libel; Request for and Order Releasing Vessel From Custody of Marshal; Libelant's Interrogatories (Libelant's Exhibit No. 6); Answer to Libelant's Interrogatories (Libelant's Exhibit No. 7); Depositions of John Joncich, Andrew Joncich and Lloyd Judy; Minute Ordered Entered November 1, 1947; Opinion of the Court; Findings of Fact and Conclusions of Law; Judgment; Petition for Appeal; Assignments of Error; Order Allowing Appeal; Notice of Appeal; Supersedeas Bond; Bond for Costs on Appeal; Praecipe for Apostles; Stipulation and Order Concerning Exhibits; Affidavit of Mailing; Supplementary Praecipe and Application and Order Extending Time for Filing and Docketing Apostles on Appeal which, together with original Libelant's Exhibits Nos. 1, 2, 3, 4, 5, and 8; original Respondent's Exhibits A, A1, A2, A3, B and C and copy of the Reporter's Transcript of proceedings on October 31, 1947, transmitted herewith, constitute the Apostles on Appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$25.15 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 8 day of March, A. D. 1948.

(Seal)

EDMUND L. SMITH

Clerk

By Theodore Hocke

Chief Deputy

[Title of District Court and Cause]

Honorable Paul J. McCormick, Judge Presiding
REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California, Friday, October 31, 1947
Appearances:

For the Libellant: Herbert R. Lande, Esq., 413 West
Seventh Street, San Pedro, California.

For the Respondent: McCutchen, Thomas, Matthew,
Griffiths & Green, by Philip K. Verleger, Esq., 704 Roose-
velt Building, Los Angeles, California. [1*]

Los Angeles, California, Friday, October 31, 1947.
10:00 A. M.

The Court: Call the case, Mr. Clerk.

The Clerk: No. 6897-M Admiralty, Andrew Xitco,
Jr. v. Oil Screw Pioneer, Her Tackle, Apparel, and
Equipment, for trial.

Mr. Lande: Ready for the libellant, your Honor.

Mr. Verleger: Ready for the respondents, your Honor.

The Court: Proceed with the evidence.

Mr. Lande: Mr. Xitco.

The Court: I have read the pleadings, gentlemen, and
the memoranda, and I think I should call counsel's atten-
tion to what probably are the latest expressions of the
Ninth Circuit on the one issue that seems to be in this
case, the amount of salvage; first, to the "Eureka," de-
cided by the Ninth Circuit on June 10, 1936, and re-
ported in 36 A.M.C., at 1179, and a later decision by
the same court, the Ninth Circuit Court of Appeals, the
"Melody," decided October 8, 1946, and reported in 46
A.M.C., at page 1637. The latter case seems to be some-
what analogous on this issue. Proceed. [2]

*Page number appearing at top of page of original Reporter's Transcript.

ANDREW XITCO, JR.,

the libelant herein, having been first duly sworn, testified in his own behalf, as follows:

Direct Examination

The Clerk: Be seated, please, and state your name.

The Witness: Andrew Xitco.

The Clerk: Andrew Xitco, Jr.?

The Witness: Andrew Xitco, Jr., yes.

By Mr. Lande:

Q. Mr. Xitco, what is your occupation?

A. Master on fishing vessels.

Q. What is the vessel you are on at the present time?

A. The boat "North Queen."

Q. How long have you been master of that vessel?

A. I have been master of fishing vessels for the last of August.

Q. Prior to that how long have you been engaged as master of fishing vessels?

A. I have been master of fishing vessels for the last 25 years, since 1922.

Q. On what type of vessels have you served?

A. On fishing vessels.

Q. What type of fishing vessels?

A. Purse seine boats.

Q. Were you master of the North Queen on January 9, [3] 1947? A. Yes.

Q. How many men were in your crew at that time?

A. Eleven men, including myself.

Q. How was that vessel engaged on January 9th?

A. In sardine fishing.

(Testimony of Andrew Xitco, Jr.)

Q. Now, on January 9th of this year during what hours were you engaged in fishing, actually fishing sardines?

A. Oh, actually fishing sardines, from a little after dark to the coming up—until the moon starts rising.

Q. Do you recall about what time that was, that the moon started to rise?

A. Around 9:00 o'clock, I think.

Q. So about how many hours of actual fishing did you have that night? A. Two hours.

Q. Now, what was the capacity of the North Queen for sardines on January 9th?

A. Well, the capacity of the boat is around 190 tons.

Q. What was the price of sardines per ton at that time? A. \$40.

Q. Now, at what time did you receive the call for assistance from the Pioneer?

A. We heard an S.O.S. call at 7:10 P. M.

Q. And whereabouts were you at that time? [4]

A. We were about two miles, two or three miles south-east of the boat,—I mean west northwest..

Q. What did you do after receiving the distress call?

A. We proceeded that way at full speed, and the radio operator was talking to the radio operator on the Pioneer.

Q. Where did you find the Pioneer?

A. We found her right in front of Laguna on Two Point Rock, or, Two Rock Point.

Q. That is off of Laguna Beach?

A. Off of Laguna town and beach.

Q. Is that point marked on the charts?

A. Yes, it is.

(Testimony of Andrew Xitco, Jr.)

Q. What type of bottom is there at Two Rock Point?

A. It is rocky and kelpy; lots of kelp and rock.

Q. What was the weather when you arrived at the scene of the stranding?

A. Well, the weather was calm, but there was a big ground—I mean, there was a ground swell. There is always the surf, the rising and falling of the sea. You couldn't hardly notice it until you got on the beach, or if you were on the rock you would notice the ground swell. If you were out there free, you wouldn't notice it as much as if you were attached to the ground some place.

Q. What is the ground swell?

A. Just the rising and lowering of the water. [5]

Q. That is a rising and lowering independent of any tides?

A. Yes.

Q. What was the position of the Pioneer in relation to these swells?

A. She was broadside.

Q. Do these swells have a direction?

A. Well, yes, they generally are from the southwest.

Q. How did the Pioneer appear to you, as you came up to her?

A. Well, she was from 30 to 45 degrees off of the shore line. She wasn't parallel with the shore line. She was about 30 to 45 degrees off of the parallel.

Q. Which way was her bow pointing?

A. Her bow was pointing towards Laguna Beach in an easterly direction.

Q. Now, will you step up to the blackboard there and just draw a rough sketch of the shore line and the position of the Pioneer, as you came up to her?

A. I am not much at drawing. This is Newport (indicating).

(Testimony of Andrew Xitco, Jr.)

The Court: Keep your voice up, Mr. Xitco, so you can be heard.

The Witness: O. K. This is Newport, see, and this is Dana Point, and Laguna is right here, and the beach would be [6] right here, and right here is Two Point Rock.

Q. By Mr. Lande: Excuse me. Go ahead. Use the red crayon on there to show the position of the Pioneer.

A. That is it.

Q. Where is north on your diagram?

A. Well, north—this is east (indicating). This would be west. That would be south, and this would be north.

Q. And in what direction were your ground swells coming from? A. They were coming more from—

Q. Will you put an arrow there to indicate that?

A. Yes. I would say from southwest. That is what you always get.

Q. All right. What was the appearance in the water of the Pioneer, as you came up to her?

A. Well, over half of the bow was up out of the water. The water line was up about 5 feet, and the stern water line was even with the water, with the sea.

Q. Now, just let me take the green crayon and I will draw this green line to show the surface of the sea. Will you sketch in, from a side view, how the Pioneer appeared to you?

(The witness did as requested.)

Q. Now, I notice you have made a red line. What does that signify? [7]

A. That is the water line, the copper paint line, between the white and the green, and this here part was sitting in the water, and this was out of the water. In other words, if she was floating right, when she was off

(Testimony of Andrew Xitco, Jr.)

of the rocks, she would be way down to there, she would come down to that water line.

Q. When the boat is floating normally is the portion below the red line under water?

A. Yes. Well, no. The red line is about 5 or 6 inches above the sea level, when she is floating.

Q. Was this a part of her bottom, referring now to the portion below the red line?

A. Yes. That is the bottom. This is the copper paint, from here down.

Q. Will you show slanting lines of red to show that is the copper paint part of the boat?

A. This is sea water (indicating), and probably the boat would come down like this.

Mr. Verleger: May I suggest, your Honor, that the sketch be marked for identification?

Mr. Lande: We will do that when he is finished.

The Court: You have indicated the sea water toward the stern of the ship with red crayon, have you?

The Witness: What is that?

The Court: Which is the bow and which is the stern? [8]

The Witness: This is the bow. This is the stern.

The Court: Instead of saying "this," mention it in nautical terms, if you understand them. If you don't understand them, of course, do not attempt to do so.

The Witness: This is the bow of the Pioneer (indicating) and this is the stern of the Pioneer.

The Court: Proceed. But don't say "this" or "that," but mention the points that you are referring to in exact terms, if you can.

(Testimony of Andrew Xitco, Jr.)

The Witness: Well, that is the bow and the stern. I don't know what else you would call them.

The Court: Instead of calling anything "this," mention it in terms. You have indicated the sea water line in red crayon, have you?

The Witness: No, this is the copper paint. This would be copper paint, all the way down in here (indicating).

The Court: Now, you are saying "this." The copper paint is what you are now drawing?

The Witness: All the red is the copper paint part of the boat, and here (indicating) is the sea water.

The Court: Now, what are you doing to make the sea water?

The Witness: Using the green chalk.

Q. By Mr. Lande: Above the green line is what you saw when you came up to the Pioneer? [9]

A. Yes, sir.

Q. What is underneath the green line is what the rest of the hull would probably be? You didn't know when she was on the rocks what was below that, did you?

A. No, but I just drew it there.

The Court: Where was she lying with respect to the rocks that were discernible to you?

The Witness: I didn't quite get that.

The Court: I will put it in a little different language. Where was she lying when you first saw her with respect to the rocks you were able to see?

The Witness: She was lying, as I said here, on this angle (indicating).

Mr. Lande: I don't think you understand the question.

The Court: Don't lead him. That is a clear question to a mariner.

(Testimony of Andrew Xitco, Jr.)

Mr. Lande: It assumes the point that the rocks were discernible. I don't think they were. If the court would ask the question whether those rocks were discernible, or whether there is a ledge of submerged rock, or what—

The Court: You may ask him the question.

Mr. Lande: Will you take the stand?

The Court: If you have finished with the diagram, you had better take the stand. If you haven't finished, go ahead.

Mr. Lande: May I show the water line as drawn by the [10] witness on the outline of the hull, labeling it "Water Line"?

The Court: Well, put an "A" and "B" as an indication. Put an "A" on one end of it and a "B" on the other.

Mr. Lande: I will put an "A" and "A-1," your Honor, because he has a "B" over there for the bow.

The Court: All right.

Mr. Lande: May I label the outline of the shore there and the position of the boat with the Roman numeral I, and the outline of the boat as he observed it when he came there with the Roman numeral II?

The Court: So ordered.

Q. By Mr. Lande: Now, Mr. Xitco, these rocks that are at that point, are they above water or below water?

A. They are below water.

The Court: At all times?

The Witness: Well, I wouldn't know that.

The Court: Then say so if you don't know. You have answered the question.

Q. By Mr. Lande: At the time you came up there, were the rocks above or below water, on the night of January 9th?

A. I didn't see no rocks.

(Testimony of Andrew Xitco, Jr.)

Q. Now, I will show you a model here of a purse seiner. Will you hold up this purse seiner model to the court and illustrate how the Pioneer looked on the rocks, stranded there, as you came up to her? [11]

Mr. Verleger: May I intrude with a question, Mr. Lande? Are you planning on putting that model into evidence?

Mr. Lande: No.

Mr. Verleger: Your Honor, I would object to having any portion of the testimony given with reference to something which is not in evidence, because of the fact that it will not be a portion of the record if a record becomes necessary.

The Court: If it is used for illustration, the dimensions or the scale should be in the record, and the model should be left here.

Mr. Lande: It is not my model, your Honor, and I would like to use it merely for the purpose of illustration and not as a diagram of anything, but just for the edification of the court.

The Court: But there may be others who may want to be edified, too, and may want to know what the instrumentalities of identification are in the record. If you are going to use anything, you had better have it in the record.

Mr. Lande: It is not mine to put in the record. I borrowed it from a gentleman at San Pedro.

The Court: Objection sustained for the reasons stated.

Mr. Lande: May we do this, your Honor, that if we use it now we submit a photograph of it later?

The Court: If that is satisfactory to the other side, and if the dimensions of it and its correlative compari-

(Testimony of Andrew Xitco, Jr.)

son [12] with the ship in question are in the record, that will be all right.

Mr. Lande: I can lay that foundation.

Mr. Verleger: I think I would have no objection if it were placed in the record, Mr. Lande, and a photograph accurately showing it were later substituted.

Mr. Lande: I will have to withdraw it for the purpose of having a photograph taken.

The Court: Let me ask the witness: Do you know anything about this model, Mr. Xitco?

The Witness: It is a model of a purse seiner.

The Court: How does it compare with the distressed ship we are talking about, the Pioneer?

The Witness: Well, the Pioneer is a purse seiner.

The Court: I know that, but that doesn't give the court any information about it. Do you know what her beam was, her length, her equipment, and apparatus?

The Witness: This here I wouldn't know anything about, this one. This is just a model of a fishing boat, a purse seiner. Well, a fishing boat is a little different, the pilot-house is. The hulls are practically all the same.

Q. By Mr. Lande: The rigging and the mast are the same?

A. Yes, the rigging and all are the same.

Q. Are the general proportions and dimensions similar [13] to that of the Pioneer? A. Yes.

The Court: You say the pilothouse is entirely different?

The Witness: No. I mean,—you see, this break here. Well, that is straight. At this break here, it goes straight back instead of having that there shoulder, and he doesn't have his portholes here.

The Court: Who doesn't have the portholes?

(Testimony of Andrew Xitco, Jr.)

The Witness: Well, the Pioneer doesn't have portholes. This boat does. But the rigging, and the boom, and the mast is all on the same principle.

The Court: The same principle. What do you mean by that? All ships are on the same principle, if they have an engine, aren't they?

The Witness: No.

The Court: What is the difference?

The Witness: Well, you wouldn't see this here (indicating).

The Court: Say what that is.

The Witness: See this here mast and boom. On a tugboat it wouldn't be equipped the same as it is equipped on a purse seine boat.

The Court: Is that the only difference between a tugboat and a purse seine boat?

The Witness: Well, a purse seine boat is built to carry [14] men and has a fish hold in it.

The Court: I don't think we are getting anywhere with this line of evidence. It does not give the court any view of the ship at all. A ship can be described nautically. If you want to use this for illustrative purposes and it is satisfactory to the other side to make a photograph of it, you may withdraw it for that purpose.

Mr. Lande: Yes, that is all I wish to use it for, and I will withdraw it and have it photographed.

Mr. Verleger: That I think is satisfactory, pending further discovery as to what it is going to be used for.

Q. By Mr. Lande: Mr. Xitco, is it your testimony that this hull is in general the same outline as that of the Pioneer?

A. Yes.

(Testimony of Andrew Xitco, Jr.)

Q. Now, will you hold that hull up in your hand and show the court how the Pioneer appeared as you came up to it when she was stranded?

The Court: Of course, she wasn't resting in a frame like that?

The Witness: No.

The Court: Can't you take it out of that frame?

Mr. Lande: No, it is glued on there.

The Court: That doesn't give much information. Mark it for identification, Mr. Clerk. [15]

The Clerk: Yes, your Honor. It is marked Libelant's Exhibit 1, for identification.

(The model referred to was marked Libelant's Exhibit No. 1, for identification.)

The Court: Now refer to it as such, Mr. Lande, from now on. And, Mr. Xitco, wait until he finishes the question before you answer. The reporter has to get everything that is said here.

Q. By Mr. Lande: Referring to Libelant's Exhibit 1, for identification, will you hold it in your hand, please, and will you show the court the angle at which you saw the Pioneer stranded when you came up to it on the night of January 9th?

A. About like this (indicating).

The Court: Just answer it the way you think it ought to be.

The Witness: This is the way it appeared to me. This (indicating) is the coast line, and this is the way it appeared to me.

The Court: Now, describe that in your own language. Suppose you were talking to a seafaring man, what would you tell him?

(Testimony of Andrew Xitco, Jr.)

The Witness: She was about 30 to 45 degrees off the parallel of the coast line, and this here water line was out about 5 feet, and it tapered back to where the water line was [16] even with this here coast line. In other words, this here water line was out of the water and you could see it for 4 to 5 feet.

Mr. Verleger: May I intrude? I think the record should show what he is referring to when he says "this here water line." I would like to have a record which is reasonably intelligible.

The Witness: The bow was up around 5 feet.

The Court: Out of the water?

The Witness: Out of the water.

The Court: Out of the surface of the sea?

The Witness: Yes, out of the surface of the sea. The water line at the bow of the boat was out 5 feet from the surface of the sea.

Q. By Mr. Lande: And how was the stern,—down?

A. And the stern very gradually come down to the water line.

Q. What part of the stern?

A. About the turntable back; from here (indicating), the corner of the turntable back.

Q. Now, was there any motion to the Pioneer as you came up to her?

A. I would say just rolling a little.

Q. Which way was she rolling?

A. Broadside. [17]

Q. That is from side to side, you mean?

A. Yes.

Q. And about how many degrees of roll did she have when you came up to her?

A. I judge around 10 degrees.

(Testimony of Andrew Xitco, Jr.)

Q. 10 degrees to each side? A. Yes.

Q. Now, was there any kelp in the vicinity of the Pioneer? A. Yes.

Q. Was the Pioneer in the kelp?

A. The kelp was around here.

Q. How close did you come to the Pioneer?

A. Oh, about 200 feet.

Q. And did you hear any talk from the Pioneer at that time?

A. Well, we could hear their voices, but it was mostly all going over to Joe and to this Vince Pakusich, who were talking over the phone, the transmitter.

Q. Now, as you came up tell the court what happened.

A. Well, as we come up to the boat we saw a few of the crew members in a small skiff, who had a line in there, and they were out rowing towards us. We got up as close as we thought we could get to the kelp and were going to pull it out toward the bow, but then we turned around. [18]

Q. When you came in, you came in bow first?

A. Yes.

Q. Will you tell the court why you did that?

A. I was afraid to back in because if I hit the bow I would keep on going, and if I bent my propeller I would be useless myself.

Q. What danger were you afraid of, so far as your boat was concerned?

A. Well, ruining the rudder and propeller, if I went the other way.

Q. On what? A. On the rocks.

Q. You felt the danger then, from the same rocks that the Pioneer was stranded on? A. Yes.

(Testimony of Andrew Xitco, Jr.)

Q. So you came in bow first, and you saw the skiff out there? A. Yes.

Q. Then what happened?

A. Then they threw us the line. They had about a 3-inch new line tied to a wire $\frac{5}{8}$ -inch rope, and we swung the boat around. We knew we didn't have the power to back the bow enough. We had pretty good power. We had a direct reversible, but we thought to give it a straight pull, so we turned it around, and Mr. Berry and the other crew members [19] hooked it up to the bitt.

Q. You turned the boat around, you mean?

A. We turned it around, and was very careful in getting as close as possible.

Q. Did you pull their wire cable aboard?

A. We pulled that Manila line aboard that was attached to the wire cable, and we pulled enough wire cable aboard to tie it to the bitt and rig it up.

Q. And at that time was the stern of your vessel pointed towards—

A. It was pointed towards the shore line, towards the Pioneer.

Q. Now, what did you have, if anything, on the stern of your vessel?

A. Well, we had our purse seine net and a skiff.

Q. Was the purse seine net on the vessel itself?

A. It was on the turntable.

Q. Whereabouts on your vessel was the turntable?

A. Just like that (indicating).

Q. Just explain it.

A. On the stern of the boat we had a turntable 20 by 21.

(Testimony of Andrew Xitco, Jr.)

Q. And how high off the deck was the top of the turntable?

A. Around the center, the center of the turntable, the deck has a curve at from 12 to 16 inches on the ends off the [20] deck.

Q. How much higher than that, that is, what was the distance from the top of your net to the deck?

A. Around 5 feet.

Q. Now, could you take a line from the Pioneer to your bow over your net and turntable?

A. We couldn't do it very well.

Q. Explain to the court why not.

A. Well, if you had it over the turntable, you wouldn't have much control of your boat, and the way we rigged it up on that double block and had a stop on the chain, it was fastened to the bitt; and that is the center of the boat (indicating), and it worked just like a B-bolt.

Q. Now, will you step to the board again, please. Have you got the crayons?

A. They are right there.

Q. Come over to the side here, and will you draw an outline of your vessel, the North Queen?

A. I don't have much room here.

Q. It will have to be a small outline, then. Draw it as she lay in the water here.

A. Well, our bow was facing out this way (indicating).

Mr. Verleger: May I make a suggestion? That is, that we take this diagram down and mark it for identification, and place a separate diagram up there, to cover that illustration, [21] so that we don't confuse the witness.

(Testimony of Andrew Xitco, Jr.)

The Court: If you have finished with it, I think that would be a good suggestion. If you have finished with it, you might follow that procedure, Mr. Lande.

Mr. Lande: We are not finished with it, your Honor, but we will tack another one on down below.

The Court: Now, read the question, please, so that you may have it in mind.

(The record was read.)

Mr. Verleger: May I suggest also, your Honor, that both of these be marked for identification now, so that we will know which diagram is being referred to.

The Court: What will the second one be, Mr. Clerk?

The Clerk: The top diagram will be Libellant's Exhibit No. 2, for identification, and the lower one will be No. 3, for identification.

(The diagrams referred to were marked Libellant's Exhibits Nos. 2 and 3, for identification.)

The Court: The lower one is the one he is speaking about now. Proceed.

Q. By Mr. Lande: Draw the entire outline of the vessel, please, and use the entire sheet of paper.

A. As she looks in the dry dock?

Q. No, as she looks in the water.

A. (Drawing.) This is the turntable. This is the [22] sardine net.

Q. Here is my pen, and you can mark that.

A. Do you want to see where the wire was?

Q. No, just draw the outline of the vessel before you brought their cable on board.

(The witness did as requested.)

Q. Now, will you draw the water line, please?

(Testimony of Andrew Xitco, Jr.)

The Court: You had better make the water line a different color of chalk, Mr. Xitco. Otherwise it will be confusing.

Now, have you used red chalk there?

Mr. Lande: Yes, your Honor.

The Court: And the rest of the drawing is in green crayon?

The Witness: That's right.

The Court: Is that right?

The Witness: I didn't get you.

The Court: The rest of the drawing is in green crayon?

The Witness: Yes, it is.

The Court: The entire outline of the ship, with the exception of the water line, is in green crayon?

The Witness: Yes. Well, you are not supposed to see this (indicating).

Q. By Mr. Lande: Take my pen and label the turntable and your net. Now, have you written "Turntable" on there? [23] A. Yes.

Q. Now, label the net.

A. Well, this (indicating) is the net.

The Court: You have done so, have you, Mr. Xitco? We have to have a record here. You know, someone may want to read this later on and we want them to be able to read it intelligently. You have indicated there the net?

The Witness: That is the net and the turntable.

Mr. Lande: Resume the stand, please. May the record show that Mr. Xitco has drawn on Libelant's Exhibit 3, for identification, an outline profile of the North Queen. May we introduce that in evidence, your Honor?

(Testimony of Andrew Xitco, Jr.)

The Court: So ordered.

The Clerk: So marked.

(The diagram, heretofore marked Libelant's Exhibit 3, for identification, was received in evidence.)

Mr. Lande: At the same time, your Honor, may we introduce Libelant's Exhibit No. 2 in evidence?

The Court: So ordered.

The Clerk: So marked.

(The diagram, heretofore marked Libelant's Exhibit 2, for identification, was received in evidence.)

Q. By Mr. Lande: Will you step down to Libelant's Exhibit 2, please, Mr. Xitco, and show the position of the North Queen in green crayon after you took a line from the [24] Pioneer to your boat and had turned your vessel so that your bow was headed out to sea?

The Court: Now, is he using the same colored chalk to do that as he did the other? It will be confusing if he does.

Mr. Lande: He is using green crayon, and the Pioneer on the rocks is in red crayon.

The Court: Very well.

(The witness did as requested.)

Mr. Lande: May I label the object just drawn "North Queen" and the vessel towards the shore as "Pioneer"?

Q. By Mr. Lande: You have shown on the diagram that the North Queen was on a line with the Pioneer; is that correct?

A. Yes, when we started pulling.

Q. Now, why did you have it in that position?

A. Well, we figured that is the way she went on.

(Testimony of Andrew Xitco, Jr.)

The Court: A little louder, please, so that we can hear you.

The Witness: We figured that is the way she went on, so to get her off, why, she had to come off the same as she went on.

Q. By Mr. Lande: Now, will you take my pen and draw the line between you and the Pioneer as you started to pull? [25]

A. Draw the line?

Q. The cable.

A. Well, our cable went right over the sardine net and over towards here (indicating).

Q. Draw it in heavier, and have it complete.

(The witness did as requested.)

Q. Now, referring to Libelant's Exhibit 3, will you use my pen, or, rather, use this pencil and will you draw in the manner in which the cable was rigged that went from the Pioneer to your vessel, the North Queen?

(The witness did as requested.)

Q. Now, will you explain that diagram to the court, please, what you have drawn in there?

A. This is the $\frac{5}{8}$ -inch wire that the Pioneer handed to us.

Mr. Verleger: May that be marked—

Mr. Lande: Just a minute, Mr. Verleger. We will get it in if you will wait just a moment.

Mr. Verleger: All right.

Q. By Mr. Lande: Will you mark that wire cable with the word "Cable"?

What size cable was that? A. $\frac{5}{8}$ -inch.

Q. The record will show the witness has written " $\frac{5}{8}$ " cable" on the line drawn here. Where was the cable [26] attached?

A. It was attached to the bitt here (indicating).

(Testimony of Andrew Xitco, Jr.)

Q. All right. Will you write "Bitt" in there?
(The witness did as requested.)

Q. I show you two photographs, Mr. Xitco, and ask you if those are fair representations of the bitts of the North Queen. A. Yes.

Mr. Lande: Counsel has seen them, your Honor. May I offer them in evidence, your Honor, as Libelant's next in order?

The Court: So ordered.

The Clerk: Marked Libelant's Exhibits 4 and 5 in evidence.

(The photographs referred to were marked Libelant's Exhibits 4 and 5, and were received in evidence.)

Q. By Mr. Lande: Will you continue with your explanation, please?

A. Well, we first wrapped the wire around the bitt, and there was a shackle on the end of it, and we clamped it around to here, so it tightened up.

Q. What do you mean by "to here"?

A. This wire we clamped, shackled it onto the outgoing wire and fastened it to the bitt. Then we got our double block, and this double block is on a 3½-inch rope. [27]

Q. How many strands of rope are in that block?

A. There is four, and then we got a chain—

Q. Will you label that "Double Block," the line as "Double Block." Now tell us about the chain.

A. We put—we have got a slip made out of chain, and we wrapped it around the wire two or three times so she wouldn't slip. Then we hooked the double block, the hook of the double block into the chain and wrapped it on our winch, so we would get it off the turntable

(Testimony of Andrew Xitco, Jr.)

and net, three or four feet up, so that if you swing it would not rest on the net and would give us control of the boat. This other end was fastened on the bitt.

Q. Is it correct that the control of the length of the double block line was at the bitt there?

A. Yes, it was tied to the bitt here (indicating). That is the control of the double block.

Q. Now, were there fishermen stationed at the bitt?

A. Yes.

Q. Now, will you label your boom and mast on that, please?

(The witness did as requested.)

Q. Now, will you resume the stand, please. Showing you now Libelant's Exhibit 1, for identification, I will ask you if you have rigged some rope on that vessel to illustrate the manner in which you had the wire cable from the Pioneer to your vessel? Have you done so? [28]

A. Yes.

Q. All right. Explain what you have done.

Mr. Verleger: I would like to object, your Honor, on the ground there is no showing that the rigging of that model corresponds to the rigging of the Pioneer, and judging by the picture I have just looked at, I don't think it does.

Mr. Lande: Let's ask the witness.

Q. By Mr. Lande: Mr. Xitco, does the rigging on that model correspond to or is it a fair illustration of the rigging on your North Queen? A. Yes, it is.

The Court: What do you mean by "a fair illustration"?

The Witness: Well, that looks just like on the North Queen here; the boom, the mast, the stays, the forward

(Testimony of Andrew Xitco, Jr.)

stay, and this is the crow's-nest, and the ladders going up, and the bitt down here.

The Court: Overruled. Read the question.

(The question was read.)

The Witness: Well, this is the wire from the Pioneer (indicating).

The Court: That is the string you are now holding?

The Witness: Yes.

The Court: Wait until I finish because somebody may later want to read the record and if it just states "this" and "that," it will not mean anything to them. [29]

You are referring to a piece that looks like hemp string there which you have attached to this model, Mr. Xitco?

The Witness: Yes.

The Court: Very well. Now, if you will follow that line, you will get into the record just what you are saying and what you mean, so that someone who reads it and does not see what you are doing will understand it.

The Witness: This string represents the $\frac{5}{8}$ -inch wire that come off of the Pioneer. Is that the way?

The Court: That is right.

The Witness: Then we pulled it aboard, got it aboard so that we had enough to wrap around the bitt there. We were in the meantime drifting until we got it all rigged up. This here represents the double block. This string represents a double block.

The Court: That is the string that projects down the boom towards the stern?

The Witness: Yes. That represents our double block, the $3\frac{1}{2}$ -inch line, and we had a slip wire or chain, and

(Testimony of Andrew Xitco, Jr.)

we put it over a couple of times, so that it would not slip and would stay there. We had our skiff over the stern here. It was not on the turntable. It was tied up behind there. So that wire was fastened to our bitt, and they fastened it over on their boat there.

The Court: What did they fasten it onto on their boat? [30]

The Witness: It was over—it was fastened some place over on their boat. It came from the Pioneer, and they fastened it over on their boat, too; must have fastened it.

The Court: You don't know where it was fastened?

The Witness: No, I don't know where it was fastened. Then we had—this is the double block, and this other line that leads to the bitt was tied here, wrapped around this bitt here to keep it up, to keep it up as we start pulling, and she would never lower herself down. In the meantime, we had the whole free, then, and we could control our boat either way. And if it was way down on the net here, you couldn't control the boat very good, and you couldn't turn it. This way it was right on top, and the main reason for that was so that it wouldn't cut the net in half, and the turntable, and all. Then we started pulling a direct pull, and it snapped right in here (indicating).

The Court: Now, describe that. Describe the point at which it snapped.

The Witness: Well, it snapped between the chain that was holding this wire, between there and the bitt on the North Queen.

The Court: That would be on the lead line, the pulling line?

(Testimony of Andrew Xitco, Jr.)

The Witness: No, on the wire. This double block was tied here. That was rope. That (indicating) was $\frac{5}{8}$ -inch [31] wire going to the Pioneer, and it snapped between this one holding it there with the chain slip there, between the chain and there (indicating).

Well, when that snapped it put an awful strain on this double block, on this that was fastened to the bitt, and the rig and everything started shaking, and I slowed it down right away and put it in reverse, and before we got it Ronnie Nordstrum, who was by the bitt, he let it go, let the leads go. If he didn't loosen that, it would probably all have come down, but he was quick enough to think fast and he let it go, so that we just reached the back end of it here.

Q. By Mr. Lande: Now, will you step to Libelant's Exhibit 3 and put a little "X" at the approximate place that you think the cable parted on your first attempt.

The Court: Where was that, Mr. Xitco?

The Witness: Right ahead of the bitt. If she snapped here (indicating), we would not have any control, but we had the wire at all times. We were fortunate.

Q. By Mr. Lande: Resume the stand. Now, on the first attempt, when you pulled with your vessel, how much power did you give your vessel?

A. Well, we had her going almost full speed at a direct pull.

Q. You were pulling directly? [32]

A. Yes, but I mean to say you tighten up on the wire and give her the speed gradually.

Q. So that at the time she snapped, you were going—

A. We were going at almost full regular speed at that time.

(Testimony of Andrew Xitco, Jr.)

Q. At that time was your vessel going straight ahead?

A. It was a straight pull.

Q. It wasn't going from side to side?

A. No.

Q. All right. Then tell the court what happened after that. Oh, by the way, just a minute. While you were pulling there, did you observe the action of your bitt on your mast, before the wire snapped?

A. I just observed the action of the stays. I did not observe the action of the bitt. The crew members did.

Q. What did you observe about the stays?

A. Well, it made an awful commotion there. I thought it was ready to come down, but the thinking of this Ronnie Nordstrum, he let the lead go off the double block.

Q. Now, will you put the letters "RN" where Ronnie Nordstrum let go after the cable parted, and put an arrow where he let it go.

(The witness did as requested.)

Q. What happened after the cable parted then and the line from the double block paid out? Did you stop your [33] vessel from going straight ahead?

A. We stopped the vessel in time to get the other end of the double block.

Q. So that the line didn't completely play out through the double block?

A. Well, we got the other end of it. I mean to say it didn't run all through the double block. We got a chance to get ahold of it.

Q. Tell the court what happened then.

A. Then we backed up some more and got a little closer and told them to give us more wire, so that we had to pull more wire aboard the boat.

(Testimony of Andrew Xitco, Jr.)

Q. Now, tell the court what was the purpose of requesting from the Pioneer an additional length of wire.

A. Well, the longer the wire, you have a longer scope, and it takes—with a direct pull you have so much greater strain on it. If it is twice the length, you have that much more length to pull, and you have such a big scope in the wire by the time you got it to the tow-bitt.

Q. Now, when you testified you illustrated the scope as being a portion of a circle; is that right?

A. Yes; where, if you have a short piece of wire, it would be a straight line. And if they give you more wire, it forms a scope and there is a lot of spring before it begins to pull. [34]

Q. Now, after you got the additional cable, what did you do?

A. Well, the boys—we fastened it onto the bitt, and then we rigged the double block and put that chain in practically the same position, and we started asking them for more wire and started pulling. Then we went on, and in the meantime we rigged, we turned 10 to 15 degrees to starboard and then to port, keeping the boat going this way and then that way, the same as a crow-bar, so that we could wheel her out. We started pulling that way for 15 or 20 minutes and she finally come off.

Q. Now, this second time that you attempted to pull her off, did you at any time give her a direct pull, full speed ahead, like you have done before?

A. No, we were pulling more on an angle, and swinging it.

Q. All right. Will you step up to the board diagram, please, and using a lead pencil, will you illustrate to the court the positions of the North Queen as she swung

(Testimony of Andrew Xitco, Jr.)

from one side to the other, in working the Pioneer off of the rocks? In other words, draw the line of the North Queen as she went completely to the right and as she swung over to the left, and so on.

A. The swing would be from here to there (indicating).

Mr. Lande: Just a minute. May the record show that the witness has drawn the outline of two hulls, which I will [35] label "A" and "B."

Now, will you sketch in the cable that you had from "A" to the Pioneer, and from "B" to the Pioneer?

(The witness did as requested.)

Q. Now, tell the court how you worked your vessel from position "A" to position "B," and back again, back and forth.

A. Well, you turned the wheel to the starboard a little and drove her 10 or 15 degrees, and then turned it to the port and would go there 10 or 15 degrees, and not hold it in one place, and after going from full speed ahead she wiggled loose.

Q. Who was at the wheel?

A. I was at the wheel.

Q. You were handling the wheel yourself?

A. Yes.

Q. Do I understand, then, you turned your wheel to the port 10 or 15 degrees?

A. Well, no, turned the boat 10 or 15 degrees.

Q. Then after your boat went a ways to the port side—

A. To the port, yes.

Q. —then you would turn your wheel the other way?

A. To the starboard, to keep the boat going.

(Testimony of Andrew Xitco, Jr.)

Q. Swinging back and forth?

A. Back and forth. [36]

Q. Between positions "A" and "B"? A. Yes.

Q. Now, at no time was your vessel in a direct stationary position?

A. No, she was always moving.

Q. Could you feel the Pioneer give as you kept working on her?

A. Well, we felt her give when she—a little there until she come off all at once, practically.

Mr. Lande: Just take the stand there, please.

The Court: Did she come off gradually or did she come off suddenly and clear the obstruction?

The Witness: She come off gradually.

The Court: When you were at the wheel, could you discern that she was moving off the rocks?

The Witness: No, I couldn't until she started moving a little faster.

The Court: What made you pursue this zig-zag movement?

The Witness: Well, it is always easier to pull something off if you work it back and forth than with a straight pull, because maybe she went on that way or maybe this way. So, by trying both of them a few degrees one side or the other, you would have a better tendency to pull it off, you have better success that way.

Q. By Mr. Lande: After she came clear, then what [37] happened?

A. Then we pulled her out for about, I judge, around a quarter of a mile or so, and then we let the cable go, the wire off of our bitt and took the double block down; and they pulled the wire aboard and Joe asked over the

(Testimony of Andrew Xitco, Jr.)

transmitter if we would stand by until they found out if they could proceed on home. So we drifted around there, I would say around 45 minutes, somewhere around 45 minutes, and then he says he is going to inspect the engineroom and down in the fish hold and see if she was leaking water and see if he could proceed slowly to San Pedro, and he called back and said they were going to proceed on home, and we could leave.

Q. What did you do after the Pioneer left Laguna there?

A. Well, then I headed on towards Dana Point, and the moon came out and then we went down a little further, went down another 5 or 6 miles, and looked around, and come back to Dana Point and we drifted around there for a while.

The Court: Did you do any fishing at all?

The Witness: No.

Q. By Mr. Lande: Why not?

A. Well, the moon was up quite a ways. I think it come up around 9:00 o'clock, and that is a pretty big moon.

Q. So you lost the night's fishing? [38]

A. Yes, we lost that night's fishing.

The Court: What was the capacity of your catch that you had on there when you started this salvage movement?

The Witness: Oh, we just started out at night to fish during the dark of the moon.

The Court: Didn't you have any fish aboard?

The Witness: Well, the sun was just setting, and we started—you just fish during the dark of the moon. On the nights the moon is out you don't work as many hours.

(Testimony of Andrew Xitco, Jr.)

The Court: I know that. I wanted to know how much you had aboard that night.

The Witness: We didn't. It was 7:10 when this happened, and around 6:45, or, it was getting dark around 6:30.

Q. By Mr. Lande: In your opinion, Mr. Xitco, what could reasonably have been expected to happen to the Pioneer if she hadn't promptly been pulled off of the rocks and freed?

Mr. Verleger: Your Honor, I don't know if this witness is being asked to testify as an expert witness on the nature of the situation, the danger of it, or not. I think some foundation should be laid as to his experience with salvage operations of vessels and the like.

The Court: Yes. He has already testified as to the physical factors. Now, if you are wanting him to testify also as an expert, you should qualify him.

Mr. Lande: Not as a salvage expert, but during his long [39] years of experience as a fisherman what he has seen happen to these vessels and what he knows happens.

The Court: As long as the witness knows, he may testify to what he knows.

Q. By Mr. Lande: Will you tell the court what you know about fishing vessels being stranded on rocks and suffering damage from the tides and the ground swells and rocks, and so forth?

A. What I know we done is a very valuable thing.

Q. The court wants to know what experience you have had. In other words, have you seen such vessels?

A. It is not only that I have seen. I have been on the rocks.

(Testimony of Andrew Xitco, Jr.)

The Court: You have been on the sea, I think you said, since 1923, was it?

The Witness: No, since 1922. I came to Pedro then and fished tuna.

The Court: And you have been sailing the coast, have you?

The Witness: Well, up between here and Vancouver Island, and down to Mexico.

The Court: You are familiar, then, with the waters around here?

The Witness: Well, I have been on the water since 1909, with my father. [40]

The Court: You have been aboard ships during all the time?

The Witness: Yes. Well, I mean when I said 1909, when I was on my summer vacation, in salmon fishing going up to Puget Sound.

The Court: What type of qualifications do you have personally?

The Witness: I am licensed on all fishing vessels.

The Court: What kind of a license do you have?

The Witness: At that time I just had an inspector's license.

The Court: Go ahead.

Q. By Mr. Lande: Now, in your opinion, what could reasonably have been expected to happen to the Pioneer if she had not promptly been pulled off of the rocks and freed on the night you found her there?

A. If she wasn't pulled off and the tide was flooding, why, she would have a tendency to roll more and bounce more on the rocks below.

(Testimony of Andrew Xitco, Jr.)

Q. And what would be the effect of bouncing and rolling on the rocks?

A. It would puncture her sides and fill her with water. All she has is $2\frac{1}{4}$ and $2\frac{1}{2}$ -inch planking.

Q. Explain that to the court.

A. She would roll, and she weighs 50 tons, and her [41] planking would puncture on her. The planking is $2\frac{1}{2}$ or $2\frac{1}{4}$ inch.

Q. By planking, you mean the sides of the boat?

A. The sides of the boat.

Q. The planking on the sides?

A. Yes. And it is very important. If she would stay there a little longer, you couldn't tell, she might puncture right there through her bottom, and her bottom showed it wouldn't be long before she filled with water, just as a purse seiner we saw that went on at Point Arguello and the boats could have saved her, but the insurance company sent the tug and by the time she come back there, the owner lost the boat, a \$75,000 boat.

Mr. Verleger: Your Honor, this may not be necessary, but unless we know the specific circumstances it seems to me that other such incidents are not pertinent, in any event, at least until we know the circumstances, the type of boat and all the other matters.

The Court: Yes, I think that we would be getting into a realm of conjecture.

Q. By Mr. Lande: Were the circumstances of that stranding similar to the Pioneer being stranded down here, a little? A. Yes.

The Court: Do you know what the tides were at the [42] Arguello Point?

(Testimony of Andrew Xitco, Jr.)

The Witness: That Arguello Point, well, we passed there at the time, and that is three or four tides.

The Court: You passed by at the time of the disaster?

The Witness: We come by in the morning. It went on in the early part of the morning, and the salvaging tug was on its way up there. But I was on the rocks over at Clemente Island, on the leeward side of the island. We went on the rocks after the tide went out, and as the tide started flooding, we started rolling around and we had severe damage on our hull as we towed in.

The Court: Did you have that experience before the day of this incident?

The Witness: Yes, I did.

The Court: Very well. Proceed. Let's get along now.

Q. By Mr. Lande: Now, what effect, and I think you have answered some question, but there hasn't been anything put into evidence as to tide tables, but, Mr. Xitco, let's assume, which I think the evidence will show, that there was a rise in tide from the time you came up there around 7:00 o'clock up until about 12:00 midnight.

Mr. Verleger: Now, your Honor, if it would be convenient, we brought in the tide tables, and we might as well put them into evidence now so that we will know what we are talking about. [43]

The Court: I think so.

Mr. Lande: You can check me on this. The low tide on the 9th was at 5:32 P. M., 5:32 in the afternoon, low tide.

Mr. Verleger: We do not agree exactly, but the difference is small. My table shows that at 5:27 P. M. it was low tide at the outer harbor, and there is a little difference between the outer harbor and the nearest nautic

(Testimony of Andrew Xitco, Jr.)

point at Laguna, which is the outer dock at Balboa, and which will give you 5:17 P. M., but the difference is so slight I don't think it is worth talking about.

Mr. Lande: And high tide was at 12:08 the next morning, on the morning of the 10th.

Mr. Verleger: As to that, again I think the difference is slight. My table indicates 12:09 A. M. less 10 minutes, which would be 11:59 P. M. That is from the United States Coast Survey.

Mr. Lande: We figured it from San Diego up, and I think it is figured there from Los Angeles. Those are approximate times, at least. Around 5:30 in the evening and 12:00 o'clock midnight, which was the high tide.

Mr. Verleger: I think it would be helpful at the same time to get into the record the amount of the rise in tide to be expected. The Coast and Geodetic Survey table shows that at Outer Harbor in Los Angeles minus 1.3 tide was low and a plus 4.3 was high, which gives you a differential [44] of 5.6 feet. Their table also shows that there is no differential as to the height of the tides between the Balboa dock and the Outer Harbor, which should indicate the height of the tide should be the same there.

The Court: As to those figures, are they estimated on any particular season or any particular period?

Mr. Verleger: They are for that particular date. They are the regular tide tables, as published.

Mr. Lande: Those figures agree with what I have, your Honor, so that there is a 5.6 feet rise in tide from approximately 5:30 P. M. to midnight.

Q. By Mr. Lande: Now, assuming he went on at around 7:00 o'clock, that is, the Pioneer went on the

(Testimony of Andrew Xitco, Jr.)

rocks at around 7:00 o'clock, what effect would the rise in tide have upon the danger that the Pioneer was in?

A. Well, as the tide started flooding, she would be in more danger. As we found her, as she stopped, she was practically fastened to the ground, and as she keeps getting on more water she would start rolling and moving up and down, and as the tide kept flooding, it would be getting worse.

The Court: Would she be worse with a flooding tide than with a receding tide?

The Witness: Yes.

The Court: Why?

The Witness: Because when she come on she stopped, and [45] then as the water started coming in and kept rising, she would start floating a little, a part of the ship keeps rising.

The Court: Suppose the tide was receding, wouldn't it be the same?

The Witness: She wouldn't move at all. If she come on at high tide, in a matter of two or three hours she would be the same as lying aground,—

The Court: Proceed.

The Witness: —because she was fastened there.

Q. By Mr. Lande: What would have happened to the Pioneer if her holds had flooded?

A. She would fill up with water and then she couldn't proceed on home under her own power. They would have to have a salvage tug there, and as time goes on you don't know what is going to happen. Wind could come up or a storm come up and you wouldn't know what could happen.

(Testimony of Andrew Xitco, Jr.)

Q. Would her machinery be damaged?

A. Her machinery would be damaged.

Mr. Verleger: Your Honor, I think these are all conclusions and conjecture. I don't think it is necessary to go into what would happen. What we are dealing with is facts. I have no objection to any question of fact.

The Court: Certain of those factors are self-evident, of course, but I don't think we want to get into the realm [46] of conjecture.

Mr. Lande: What I wanted the witness to testify to is what would reasonably be expected to happen.

The Court: If there is a hole in the bottom of the ship and she is on the surface of the sea it is evident what is going to happen unless there is some further human instrumentality that intervenes itself.

Mr. Lande: Your Honor, I would like to read into the record at some time, as a basis for further questioning of Mr. Xitco, the answers to several of the libelant's interrogatories; or, to save time, may I introduce the entire questions and answers in the interrogatories in evidence?

Mr. Verleger: They are a part of the record anyway, aren't they?

The Court: I don't know whether they are a part of the record on the hearing. They are a part of the record, but whether they are a part of the record on the hearing on the merits is a debatable question. I think if there is no objection they will be made a part of the record and marked as exhibits in the case.

Mr. Lande: Thank you.

The Court: There being no objection, it is so ordered.

(Testimony of Andrew Xitco, Jr.)

The Clerk: Libelant's Interrogatories are marked Libelant's Exhibit 6 in evidence. [47]

(The document referred to was marked Libelant's Exhibit 6, and was received in evidence.)

The Court: I have read most of them, Mr. Lande, and I am familiar with them.

Mr. Verleger: And the answers?

Mr. Lande: May I ask the court, is the court familiar with the technical terms in the answer to the ninth interrogatory, about the keel, keel shoe, forefoot, and so forth?

The Court: Just a moment.

The Clerk: The answers to the interrogatories are marked Libelant's Exhibit 7 in evidence.

(The document referred to was marked Libelant's Exhibit 7, and was received in evidence.)

The Court: Some of the terms I am not familiar with. Most of them I am.

Q. By Mr. Lande: Will you explain, Mr. Xitco, what the keel shoe on a vessel such as the Pioneer consists of?

The Court: I think I know what the keel and the keel shoe is. The ones I do not understand are the "fathometer hull fitting blocks" and the "caulking in bottom butts and seams."

Q. By Mr. Lande: Will you explain those terms to the court, please?

The Court: Just a moment. I don't think there are any others. [48]

"Stuffing box," I think I know what that is, and "the screens on sea suction."

(Testimony of Andrew Xitco, Jr.)

Q. By Mr. Lande: Whereabouts are the sea suction on the Pioneer? Let me ask you a preliminary question. You have seen the sea suction? A. Yes.

Q. Have you seen the Pioneer on dry dock?

A. Yes.

Q. Describe in words where the sea suction on the Pioneer is located?

A. Most of these boats have—

Q. On the Pioneer?

A. Yes. The Pioneer has a couple sea cocks about 5 or 6 feet from the bottom of the keel up here; sea screens or sea cocks.

The Court: What are they made of?

The Witness: Bronze.

The Court: What was the keel of the disabled ship made of?

The Witness: Just ordinary pine.

The Court: The whole keel?

The Witness: Yes, or made of fir.

The Court: Talk louder.

The Witness: Fir or northern pine.

The Court: No metal at all? [49]

The Witness: No. There is iron bark at the bottom. That is on the shoe that they slide along and these fathometer fittings fit right in there where the planking starts fitting in.

The Court: What is that instrument?

The Witness: Well, they have a different one. They have maybe two of them. We have just one of them on this side. The fathometer fitting fits right above the keel there, right about from a corner there back about 30 feet.

The Court: Is that a measuring instrument which determines the depth?

(Testimony of Andrew Xitco, Jr.)

The Witness: The depth, yes.

The Court: It works automatically?

The Witness: All by electric.

Q. By Mr. Lande: How high above the keel are the sea suction locations?

A. Well, they are about 6 feet—5 or 6 feet from the bottom of the keel. It would be about 6 feet to reach them, to put your hand on the keel and to reach up there to the sea suction locations.

Mr. Verleger: Your Honor, as a matter of assistance I have some pictures of the Pioneer in dry dock. That might be a way of showing exactly where the sea suction locations are, rather than this explanation.

Mr. Lande: We would appreciate the use of them. [50]

The Court: What is the function of those sea suction locations?

The Witness: Well, you have to have water to cool your engine off, and all your different pumps, you have three or four big pumps and auxiliaries, and your heavy engine. He has—I think they have fresh water coolers, but for their pumps, that is what you suck your sea water into, and to wash your decks down, and everything.

The Court: You think she received her supply of water for these pumps through the sea suction locations?

The Witness: Yes, whatever there is used on deck or in the engineroom comes through there.

Q. By Mr. Lande: I show you a photograph and ask you if you recognize that as the hull of the Pioneer.

A. Yes, that is the starboard bow. That is the starboard bow of the Pioneer.

Mr. Lande: May that be introduced as libellant's next in order, your Honor?

(Testimony of Andrew Xitco, Jr.)

The Court: So ordered.

The Clerk: So marked, as Libelant's Exhibit 8 in evidence.

(The photograph referred to was marked Libelant's Exhibit 8, and was received in evidence.)

Mr. Lande: Will you take my pen, please, and mark the different objects that appear on that photograph, when the court is through with it? [51]

Have you any objection to that?

Mr. Verleger: I would rather it would not be marked up too much. I want to use it later on myself.

The Court: What is this plate that is discernible on this exhibit? What is the number again, Mr. Clerk?

The Clerk: Exhibit 8.

The Court: I mean this plate indicated here (indicating).

The Witness: The chief would know more about the plate. That must be for the radio, the ground. That was for ours; we have one there for a ground.

The Court: Then you don't know.

Q. By Mr. Lande: What are the other objects shown there? For instance, the bubble right there (indicating)?

A. That is a fathometer, that is, the part down there (indicating). The others up there are the sea cocks.

Mr. Lande: May I mark this very carefully, Mr. Verleger?

Mr. Verleger: Certainly.

Q. By Mr. Lande: Will you show us the sea cocks, please? A. These are the sea cocks here.

Q. These two here? A. There is three.

The Court: He is marking up your picture, Mr. Verleger.

(Testimony of Andrew Xitco, Jr.)

Mr. Verleger: As long as he doesn't mark it up too [52] large I don't care. I am not sure my witness may have the same names for all of it. If you have any further markings, would you mind making it by letter?

Mr. Lande: I have the words "Sea cocks" there, and three lines there.

Q. By Mr. Lande: Are those sea cocks—does that mean the same as—

Mr. Verleger: I think, counsel, that it is hardly feasible for Mr. Xitco to answer whether the sea cocks referred to mean the same as referred to in Libellant's Interrogatories.

Mr. Lande: Let me finish the question.

Q. By Mr. Lande: Are those sea cocks the same as screens or sea suction?

A. Those are the screens for the sea cocks.

Q. What is shown there is the screens for the sea cocks?
A. Yes.

Q. What is your estimate of the distance between those sea cocks and the bottom of the keel?

A. That is about 6 feet, from here to the top one.

Q. Indicating from the bottom of the keel?

A. Yes, from the bottom of the keel here (indicating) to there.

Q. To the sea cocks as being 6 feet? [53]

A. To the sea cock strainers.

Q. To the sea cock strainers. Now, what would the fact that the sea cock strainers had been damaged or disturbed, what would that indicate to you as to the nature of the position of the Pioneer on the rocks?

(Testimony of Andrew Xitco, Jr.)

Mr. Verleger: Your Honor, I think the facts speak for themselves. I don't want to be technical, but I don't think the witness' opinion can help us very much.

Mr. Lande: It may be a matter of common knowledge.

Mr. Verleger: The fact is that they were disturbed or damaged. The exact nature of that I think will be shown later and the court, I think, is entitled to draw its own inferences from the evidence, and I don't think it will help us very much to have people tell us what they think it meant.

The Court: Are these the apertures you describe as being the openings through which the sea water got into the various parts of the ship that needed cooling or washing or cleaning?

The Witness: Yes.

The Court: I think it is self-explanatory. Did I understand you to say that the sea water that comes through those apertures was used to cool the engine?

The Witness: Well, they are used for different things, for the pumps, the engine—

The Court: No, I am asking you a direct question. [54] Please answer it, if you can.

The Witness: Yes.

The Court: Read the question, please.

(The question was read.)

The Witness: With the cooling system.

Q. By Mr. Lande: Of the engine?

A. Of the engine.

Q. Where is the rudder stuffing box on the Pioneer?

A. Well, they have an inboard and outboard—

Q. Tell us where the outboard one is.

A. Well, this is the stern bearing (indicating).

(Testimony of Andrew Xitco, Jr.)

Q. Referring—

A. Where it fits in this here this right here (indicating), that is the stern bearing. That is a stern bearing, and the inboard bearing of the tail shaft inside the hull you can't see. There are two bearings that hold the tail shaft, the inboard bearing and the outboard bearing, and most of them have more babbitt, but lots of them haven't.

Q. You have shown us the stern bearing and stuffing box? A. Yes.

Q. I asked you where the rudder stuffing box is.

A. Well, the rudder stuffing box is up at the top of the boat. They have a flange—you mean the rudder stuffing box? [55]

Q. Yes.

A. You couldn't see it there, because we have, and the rest of them have it inside there. There is a flange, and backing around, this is a rudder box here to keep the water from coming in through the fish hold of the stern.

Q. And where is the quadrant located?

A. Well, I don't know where theirs is located. Some have it above the deck and some below.

Mr. Lande: You may cross-examine.

Cross-Examination

By Mr. Verleger:

Q. Mr. Xitco, referring to Libelant's Exhibit 3, and referring to the boom as shown on Libelant's Exhibit 3, in what manner was the boom held to the mast?

A. The boom was held to the mast with four leads, 3½-inch Manila rope.

Q. Four leads. A. Four leads.

(Testimony of Andrew Xitco, Jr.)

Q. Do those leads all come at the same point?

A. On the mast?

Q. On the mast. Will you step down to Libelant's Exhibit 3 and indicate by marking with the letter "A" where the supports from the mast to the boom are connected to the mast?

The Court: Stand over to one side, so I can see you. [56]

The Witness: That is the double block. That is hooked—I can't draw it, but we have a big inch and a quarter loop that fits on there, and there is a shackle on the double block that slides back and forth.

Q. By Mr. Verleger: Will you put the letter "A" there? A. Yes.

Q. Will you show where it is fastened to the boom?

A. Well, there is a block here (indicating), and there is a block here.

Q. Mr. Xitco, are those the sole supports—

A. Well, the grounds.

Q. For the boom?

A. For the boom, outside of the stays, they keep it from whipping from one side to the other.

Q. Are there any lines that connect the mast to the boom from a lower point on the mast? A. No.

Q. I think you can take the stand again, Mr. Xitco. Do you use these lines to raise and lower the boom when you wish to do so?

A. On that exhibit A there, yes.

Q. Yes.

A. There is two more lines—I didn't complete it, but there are two more lines that go across there farther down where I put the little block. [57]

(Testimony of Andrew Xitco, Jr.)

Q. Will you step down and indicate where those lines are?

A. Yes. I thought you just wanted a rough outline. This is a double block. These are two single blocks, and this line comes down here and is tied on here.

Q. So you have four $3\frac{1}{2}$ inch lines holding the boom to the mast? A. Yes.

Q. In what manner is the mast itself braced?

A. Well, we have an inch or a $\frac{7}{8}$ -inch wire here for the stay, the forward stay.

Q. Let me interrupt. You say you have a $1\frac{1}{2}$ -inch wire—

A. No, one-inch or $\frac{7}{8}$ -inch. I didn't measure it.

Q. You have an inch or a $\frac{7}{8}$ -inch steel wire—

A. Yes.

Q. —running from the mast?

A. From the mast here to the stem, the stem iron on the boat.

Q. Will you mark that line with the letter "C"?

A. Which line? This (indicating)?

Q. Yes.

A. (The witness did as requested.)

Q. Is the mast also braced so as to prevent it from moving crosswise on the ship? [58] A. Yes, it is.

Q. All right. You can step back to the stand, Mr. Xitco. Would it not have been possible, Mr. Xitco, to avoid the risk of strain to the rigging of the North Queen in the event the line from the Pioneer to the North Queen should break by lowering this boom somewhat and by securing the line from the boom to the line from the Pioneer by a loop or by some form of connection which would slide along this cable from the Pioneer?

A. So it would slide back and forth?

(Testimony of Andrew Xitco, Jr.)

Q. Yes. A. You could do it, yes.

Q. Would that not eliminate the risk of damage to the rigging of the Pioneer, in the event that the line—will you strike that, please?

Would that not eliminate the danger of damage to the rigging of the North Queen should the line from the Pioneer break?

A. I mean to say it could be done, but it would not be practical.

Q. That is not the question, Mr. Xitco.

Mr. Lande: I think the witness is entitled to answer the question, your Honor, and also to state his reasons.

The Witness: I say it could be done.

Q. By Mr. Verleger: I say, would that not eliminate [59] that risk?

A. And you could leave it on the turntable, and you could run it through the hawser holes, but the most practical way and the safest way is the way we had it.

Q. The immediate question is whether, if you had a connection that would slide in the manner I have described, would that not eliminate the danger of damage to the rigging of the North Queen if the line from the Pioneer broke?

A. Well, I never rigged it that way, and I wouldn't know.

Q. Mr. Xitco, does the Pioneer have an eye through which it would be possible to lead a cable on the bulwark of the North Queen forward of the turntable and the net? A. Yes.

Q. Would it have been possible to bring a line from the Pioneer through that eye?

A. You wouldn't have the control of your ship then.

(Testimony of Andrew Xitco, Jr.)

Q. It would have been possible, then?

A. You can do it, but you wouldn't have no control over your boat.

Q. Do you remember, Mr. Xitco, whether at any time during the time you were pulling against the Pioneer that a vessel by the name of—that another fishing boat was in your immediate neighborhood standing by?

A. As we were pulling,—well, after they heard that [60] radio conversation, there was another boat come around there, I think after we parted the line the first time.

Q. After you parted the line the first time and before you commenced pulling on the line the second time another fishing boat appeared on the scene?

A. Yes.

The Court: May I interpose there? You say after you parted the line the first time. Did the line break more than once?

The Witness: No. I just meant when it parted.

The Court: The second parting was when you let go and she went on her way?

The Witness: No, on the first straight pull, as I explained before, that is the time the wire broke.

The Court: Did it break more than once?

The Witness: The second time it didn't break. That is the time she come off.

The Court: Yes.

Q. By Mr. Verleger: Can you step forward to the board here and on Libelant's Exhibit 2 show the approximate position in which the other fishing boat was standing by?

A. Well, I didn't see them. They were out here farther.

(Testimony of Andrew Xitco, Jr.)

Q. They were—

A. They were just maneuvering around.

Q. They were standing by off to the west of the North [61] Queen; is that correct?

A. Well, I didn't pay much attention to them. All I saw was a deck light, and I didn't pay much attention. I wasn't looking there at the time.

Q. I think you can get back on the stand, Mr. Xitco. Do you know whether they were off your bow or off—well, do you know whether they were off your bow?

A. Yes, they must have been off the bow.

Q. Do you have any idea how far away they were?

A. I wouldn't know.

Q. Do you know whether they made any offer to assist the Pioneer?

A. Well, I didn't hear the transmission always over the radio. It was Joe that was talking to Vincent Pakusich. They were on the radio, and I was on top at the wheel.

Q. Then the answer to the question is "No"?

A. No.

Q. Did you see the Pioneer commence to take a line to this other fish boat?

A. The Pioneer did not take no lines to the other fishing boat. They talked with us, and we got the line.

Q. Yes, but after the line broke, and while you were preparing to pull a second time, is it not true that steps were commenced to take a line from the Pioneer to the other boat? [62]

A. I didn't notice that while we were working down there.

(Testimony of Andrew Xitco, Jr.)

Q. Approximately what time was it when you first got the message of the Pioneer and came to her assistance?

A. Around 7:10 P. M.

Q. Approximately what time were you completed with the entire operation?

A. Around a quarter to nine, or somewhere around 9:00 o'clock, or 8:30.

Q. Did you have any occasion to notice, or, did you notice how far out of the water the bow of the Pioneer was when you commenced to pull her off after you had refastened the line, then, after it had broken?

A. Yes, you could see by putting the spot light on it, which we did two or three times, the search light.

Q. About how far up was the water line?

A. It was 4 to 5 feet.

Q. It was 4 to 5 feet at the time you commenced to pull a second time?

A. I judge about that.

Q. And it was 4 to 5 feet, about, at the time you first commenced to pull it off?

A. It was a matter of 4 to 5 feet at the time we were around there. That is my judgment.

Q. You mean it remained 4 to 5 feet throughout the time [63] you were there?

A. It appeared to me it was about 4 to 5 feet as I put the light on, the first time I come in and put the light on, and then I turned the boat around. Then we were at a farther distance from them. Then as we pulled the second time, we were headed out.

Q. And your best recollection is that the bow of the Pioneer was about 4 to 5 feet out of the water when you commenced to pull the second time?

A. Around that.

(Testimony of Andrew Xitco, Jr.)

Q. Mr. Xitco, you have spoken concerning the nature of the bottom where the Pioneer was aground. Do you have any knowledge of the nature of that bottom?

Mr. Lande: I couldn't hear that question.

Mr. Verleger: The question I asked—well, perhaps the reporter had better read the question.

(The question was read.)

The Witness: According to the information that I get off the charts. I didn't survey the bottom.

Mr. Verleger: I think that is all for the present, your Honor.

The Court: Mr. Xitco, do you think there was any real danger, in view of the fact that you were able to use the towline in the manner that you have described, of fouling your own vessel by reason of your acts in attempting to [64] rescue the disabled ship?

The Witness: I think that was the correct way to rig it up. The other way I am sure that you would slip—that as you turn she would slip this way and then the next time the strain would be—in other words, if everything was tied from this way on, and if you had a slip, she would swing over, she would kind of be slipping back and forth, and might pile down, and all the tendency would be to piling. We wasn't pulling from the boom. All this up there was to keep the wire from rubbing on the net, and so we could swing her around. Most of the strain was right at the bitt.

The Court: There wasn't much danger to fouling your ship?

The Witness: No, it couldn't foul because everything—as it happened, everything was O. K.

The Court: You mean it was free?

(Testimony of Andrew Xitco, Jr.)

The Witness: It was free. The boat is free to do everything. All right. Here you have a hawser and like he explained, then it would be around here, and you would have trouble holding it in place all the time. This is the way they have been doing it among the boats.

The Court: That is all.

Redirect Examination

By Mr. Lande:

Q. Mr. Xitco, one further question: Isn't it true [65] that when you are about to engage in a pulling operation, or, where you are about to engage on a difficult pulling operation, it is of the highest degree of importance to have everything as free as possible, against the possibility that something may break, and, particularly, against the possibility that the line may break?

A. Oh, you have got to have everything rigged up the right way.

Mr. Lande: That is all, your Honor.

The Court: You wouldn't say that the ship was rigged for salvage purposes, would you?

The Witness: No, it wasn't rigged for salvage purposes. It was rigged for fishing.

The Court: In other words, this was an emergency?

The Witness: Yes. No fishing boat is rigged for salvage.

The Court: Wait until I finish the question. In other words, you had to rig your ship as a salvor, according to the emergencies as they presented themselves to you?

The Witness: Yes.

The Court: That is all.

(Witness excused.)

Mr. Lande: Mr. Berry, please. [66]

MATT BERRY,

called as a witness by and on behalf of the libelant herein, having been first duly sworn, testified as follows:

Direct Examination

The Clerk: Will you take the stand, please, and state your name.

The Witness: Matt Berry, M-a-t-t B-e-r-r-y.

By Mr. Lande:

Q. Matt, you are going to have to keep your voice raised, so that we can hear you. What is your occupation, please? A. Fisherman.

Q. How long have you been engaged as a fisherman?

A. The major part of eighteen years.

Q. What other types of work have you done besides fishing? A. Salvage and on tugboats.

Q. When you were on fishing vessels, what type of vessels were you on?

A. About 95 per cent were purse seine vessels.

Q. Similar to the North Queen? A. Yes, sir.

Q. And the Pioneer? A. Yes, sir.

Q. For whom did you do salvage work? [67]

A. I worked in salvage for the United States Navy in World War II.

Q. And how long were you doing salvage work in the Navy? A. About two years.

Q. And whereabouts did you do salvage work?

A. I worked in the Leyte Gulf salvage operations, the Caroline Islands, New Guinea and the Solomons.

Q. And during those operations on what type of vessels were you working?

A. We worked on all vessels, all types, small craft from 50 gross tons up, and the average type of vessel

(Testimony of Matt Berry)

was from 100 to 300 gross tons. Some vessels were larger, up to 3,000 tons.

Q. The vessels from 100 to 300 gross tons, were they approximately the same size, although not the same type, as the fishing vessels involved here?

A. Yes, they ran from 100 feet to 200.

Q. Now, what type of salvage operations did you handle, and what did you do in the salvage operations?

A. I was the acting salvage officer in charge of operations.

Q. On your vessel?

A. In the salvage operations in Leyte Gulf the vessel I was on was senior salvage vessel in the Leyte Gulf operations, and I was acting salvage officer in charge of operations. [68]

Q. Can you give the court some idea of the number of ships you worked on during those two years?

A. I would say that we pulled off or helped pull off approximately 72 to 74 vessels.

Q. Were there any cases of vessels stranded on rocks?

A. Oh, yes. The formation of the islands is coral and there is a lot of reef around the atolls and most of our jobs were the detail of salvaging of vessels that were stranded on rocks.

Q. Now, have you got any citations or medals from the United States Navy for your work while you were in the Navy?

A. I have a letter of commendation for salvage operations, which was in the Leyte Gulf operation, and I have the Philippine Liberation Medal from the Leyte Gulf operations, and the regular campaign bars that come from battle in the Asiatic theater operations.

(Testimony of Matt Berry)

Q. Well, I mean any other commendation other than what you have told us, insofar as your salvage operations are concerned?

A. I think I had two commendations on salvage; one letter of commendation on salvage, and the Philippine Liberation Medal, which was achieved, as I said, during the Leyte Gulf operations.

Q. During the time you have been a fisherman, have you observed wrecks of fishing vessels or been on vessels when [69] they have been wrecked?

A. Yes, sir. I have been on one or two—two vessels that had hit the rocks and were stranded, and I have helped a number of times to pull vessels off that were stranded slightly, or in trouble; a number of times.

Q. Were you serving on the North Queen on January 9, 1947? A. I was.

Q. In what capacity? A. Deck fisherman.

Q. All right. When the North Queen came up to the Pioneer, describe to the court how the Pioneer looked to you, as you saw her stranded there?

A. The Pioneer was almost horizontal to the beach. I would say it was on a 15, 20 or possibly 25 degree diagonal to the beach, and it was possibly three-quarters of a mile off shore and lying on the rocks which was surrounded by kelp, with the bow, I would say, about three or four feet above water. We didn't come more than three or four hundred feet close to the vessel on account of the kelp and the rocks.

Q. What was the weather at the time?

A. The weather was good weather, with a moderate ground swell.

Q. And did you notice any motion to the North Queen—I mean, to the Pioneer? [70]

(Testimony of Matt Berry)

A. There was a slight rocking motion; I would say five to 10 degrees, on the surge of the ground swell.

Q. Whereabouts were you on the North Queen after that, after you came up to the Pioneer?

A. When we came up to the Pioneer, I was on the bridge discussing the situation with the master. He knew that I had been in salvage and called for me. In fact, he sent a man, one of the fishermen, to call me, he wanted to discuss the situation with me on the bridge. I was down in the galley. So he asked me if I would help supervise the operations on deck, inasmuch as I was supposed to have some experience in that type of work, and I said that I would. So until we came to the Pioneer I was up on the bridge with the master.

Q. All right. Then when you came to the Pioneer, where did you go?

A. As we came to the Pioneer, we noticed that they had a small skiff out with a number of men in it taking out a line—paying out a line to us. This line was attached to a wire rope from their vessel to ours. They brought—they rode the small skiff over off the bow of our vessel, and we took the end of the line from the bow, and upon my suggestion worked the Manila line down the starboard side aft around the rigging and to the aft deck. Thereupon we hauled in the Manila rope on the aft winch until we came to the wire rope. Then upon securing the end of the wire rope, and having enough slack, [71] we secured the wire rope to the bow of the North Queen, then aft.

Q. I will show you Libelant's Exhibit No. 3 and ask you if that correctly portrays the placement of the wire cable to the bow of the North Queen? A. It does.

(Testimony of Matt Berry)

Q. Then what did you do?

A. We rigged the double fall from the boom down to the wire with a chain sling similar to what is portrayed in that exhibit.

Q. And how did you attach that double block or fall to the cable you were going to use?

A. With the chain sling.

Q. Will you explain to the court why you used the chain sling than the other—

A. The chain will not slide on wire rope, whereas Manila rope will, and wire is not practical. It has a tendency to have a biting effect, on the wire chain against the wire, and cannot slide, and that is the only thing you can use on wire rope.

Q. What was the advantage, if any, in having the chain bite into the wire cable at that point and hold?

A. The express purpose of that double fall was to keep the wire up high and clear the net. Therefore, we would have maneuverability on the North Queen, so that we could tow the [72] Pioneer off of the rocks, or attempt to. Without that you have no maneuverability and your ship will go in only one direction.

Q. What was the position of your boom at that time?

A. The boom was top up to about 20 degrees from top.

Q. Explain to the court why you had it in that position in preference to any other position?

A. That position is the strongest position of the boom. The farther down you lower your boom, the weaker it is. That boom on the North Queen I believe runs about, if I may venture, runs around a four ton boom, three and a half to four ton boom.

(Testimony of Matt Berry)

Q. Would that be strong enough to take the pull strain if it were unsupported? A. No.

Q. Now, how was the first attempt made to free the Pioneer?

A. In the first attempt, we—by “we” I mean the North Queen—the master, myself and the crew discussed it and suggested that we try to tow the Pioneer off with a direct pull, assuming that it went on in one direction, that we would pull in the opposite direction and there might be a possibility that she would get off. But after we had started towing gradually, gradually building up our speed until we came to a maximum speed, maximum towing speed, the only thing that resulted was the parting of the wire between the chain [73] slip and the tow chain.

Q. Now, based on your experience, is a $\frac{5}{8}$ -inch wire cable of sufficient strength to stand a direct pull in a situation like you have described here?

A. I don't believe that the $\frac{5}{8}$ -inch wire is strong enough. A $\frac{5}{8}$ -inch wire, I am not quite sure, but I think it has a breaking strength of anywhere from 6 tons to 8 tons of breaking strength, and I don't think the $\frac{5}{8}$ -inch wire rope is strong enough to tow a vessel of approximately 200 gross tons off the rocks when she is high and dry.

Q. Mr. Xitco has placed an “X” where the cable parted on the first direct pull. Does that correctly portray the situation?

A. It followed close there. I would say a foot or two aft the bow.

(Testimony of Matt Berry)

Q. At the time she parted, describe to the court in detail, please, what happened to your rigging, and how it acted.

A. Well, the rigging took a violent jar. In fact, I jumped to the side and I thought for a minute the boom, mast and all were coming down. We just happened to be lucky that one of the crew members released the end of the double fall, and it paid out. In the meantime the master had slowed down the speed, stopped and reversed. And it was just fortunate the end of the double fall had twisted and fouled in the double [74] block. That is the reason we didn't lose the end of the wire rope. It was just an act of God in just the fouling of the double block.

Q. If you had not had a secure hold on the towing cable at the place where you attached the chain to the double block, you would have lost the wire to the Pioneer, would you not?

A. Oh, yes, the chain slip was the only thing that held the end of the wire.

Q. And that would have entailed considerable time in getting the line again?

A. We would have lost considerable time; possibly half an hour. I don't know how fast people could work. Well, at least 15 minutes or half an hour would have been lost in losing that wire and having to get the same wire chain, or another one, if it was available.

Q. Now, tell the court what happened next, after the cable parted at that time.

A. We got down and got more wire in and asked the Pioneer to pay out more wire rope, so that we could attempt to pull them off again.

(Testimony of Matt Berry)

Q. What was the purpose of asking for additional wire?

A. Well, the cant of your wire has a lot to do in determining your tow. If I may give an illustration, in ocean tows we usually use 350 fathom of two-inch to 2½-inch tow [75] to take a 10,000-ton pull, and that cant in your wire will go down as low as 100 feet below the surface, for that acts as a spring on the sea, and it makes it much easier to tow and much safer, with more wire used and more cant.

Q. Did the Pioneer give you additional wire?

A. She gave us additional wire. I would say another 75 fathom or approximately that.

Q. Then what happened?

A. We started towing again. I went up on the bridge with the master of the vessel, and we decided that inasmuch as we couldn't pull the vessel off with a direct pull of the 5⁄8-inch wire, we would attempt to pull her off by using a series of diagonal tows, and we started first to the right, and we got to a certain position of leverage, we would give it a full throttle, and then swing again to port and again give it the full throttle. We worked on the theory of a lift or bar, of squirming the vessel off the rocks. And after towing that way 10 or 15 minutes, I noticed it seems to slack the wire, which is a sign that the vessel had moved; and since the wire had slacked, I knew she had moved and I told the master I believed the vessel had moved. Then we started again on the next angle and the vessel seemed to give a lurch and came straight off.

(Testimony of Matt Berry)

Q. Had this technique of working it off at angles been used by you before in other salvage operations? [76]

A. I learned that by experiment in similar salvage operations. I learned that in the salvage of LSMs and LCTs, vessels that were stranded on the mud and on the coral beaches and we had difficulty numbers of times in taking those vessels off in amphibious operations. So we experimented with that theory, and that was the theory we used on the Pioneer. We found it very successful in the Philippines.

The Court: We will suspend now until 1:30, gentlemen, in order that we may finish on schedule. Be here at 1:30.

(Whereupon, at 12:05 o'clock p. m., a recess was taken until 1:30 o'clock p. m.) [77]

Los Angeles, California, Friday, October 31, 1947.

1:30 P. M.

The Court: All present. Proceed.

MATT BERRY,

called as a witness on behalf of the libelant, having been previously sworn, resumed the stand and testified further as follows:

Direct Examination (Continued)

By Mr. Lande:

Q. Mr. Berry, in your opinion, what danger could reasonably be expected to the Pioneer if she weren't promptly freed off the rocks that she was stranded on?

A. I believe that with the rise in the tide and the slight increase in buoyancy that the Pioneer would suffer

(Testimony of Matt Berry)

a greater damage to her hull, due to the position of the Pioneer on the rocks.

Q. What do you mean by "due to her position"?

A. Her position just almost horizontally to the beach, and due to the ground swell, the slight increase in the tide and the greater buoyancy, it would mean greater pounding against the rocks, and possibly could capsize, and the rocks just might puncture her hull in that type of vessel.

Then their nets are all in one piece, and if the ship ever capsizes or sinks, that net will go down and sink, as she has no chance to free herself, which has been proven before. [78]

Q. Was time an important element in freeing the Pioneer?

A. I believe that time was an important element in freeing her.

Q. Explain to the court why.

A. Well, the longer that vessel stayed on the rocks and the more pounding she did, the more danger she would sustain to her hull, and, therefore, time was an important element.

Q. From what you know of salvage vessels and the way they are rigged and equipped, in your opinion was there any danger to the North Queen in using its vessel and rigging to attempt to pull the Pioneer off?

A. Yes, I would say that there was danger.

Q. Explain to the court what that danger would be.

A. The Pioneer's—I mean the North Queen's boom and mast is not rigged for towing, not rigged for salvage or towing, and it is not customary to take and rig your block and take a horizontal pull from the bow aft and

(Testimony of Matt Berry)

to take your strain on your boom and mast. It places too much strain on the boom and mast, and if anything should part on that added strain there, the mast and boom possibly could come down, and if men are on the deck they are liable to get hurt, get killed or maimed, which has happened before on those vessels.

Mr. Lande: You may cross-examine. [79]

Cross-Examination

By Mr. Verleger:

Q. Mr. Berry, isn't it true that the North Queen has on several occasions been used for fairly long tows?

A. Which vessel was that? I didn't get that question.

Q. The North Queen.

A. At the time I was on the North Queen, which was a period of four or five months, the vessel was never used for towing purposes, while I was aboard, so I wouldn't know.

Q. Isn't it true that fairly recently she was used to tow a vessel from the waters of Mexico for quite a long haul?

A. I wasn't on the North Queen. I was on the boat Searose, and I don't know if the boat North Queen was used for towing or not.

Q. Isn't it true, Mr. Berry, that as the tide would rise about the Pioneer there would be more water under her, so that as she rose she would actually be in less danger of touching her sides against the rocks than she was when you first arrived there?

A. There would be the relationship of the buoyancy to the weight of the vessel, and if a person could actually figure the amount of displacement that she had in relation to the weight of the vessel and the buoyancy, and the

(Testimony of Matt Berry)

rock, it could easily be determined, but I haven't the figures here. If the vessel had enough buoyancy and the rise in tide was [80] great enough, she could float off, but with a 5-foot tide, which was there, and we came in possibly on a foot or a foot- and-a-half tide, I don't think you could float her without additional power. That is my personal opinion.

Q. You said that as the tide rose the danger of damage would be increased. Is that correct?

A. With the slight increase in buoyancy is my statement. I said with the rise in tide and the slight increase in buoyancy. If it increased 20 feet, such as the Alaskan tides, she would float off, but with a slight rise I don't think she would.

Q. The question is with a two foot rise in tide—

Mr. Lande: I am sorry, Mr. Verleger. Your back is to me and I can't hear the question very well. Would you mind standing over here a little?

Mr. Verleger: Not at all. I am sorry.

Q. By Mr. Verleger: A two foot rise in tide would have a tendency to increase the amount of water beneath the Pioneer, would it not? A. Two feet.

Q. With two feet more water under the Pioneer, in your opinion, is she as likely to touch rocks on either side as she rose?

A. I didn't see the rocks. I assumed there were rocks there. [81]

Q. Assuming there were rocks on each side of the Pioneer, which had not as yet caused any substantial damage to her sides, with her existing line of roll, and assuming you had a two foot rise in tide, isn't it less likely that she would have touched those rocks?

(Testimony of Matt Berry)

A. No, I assume it was more likely, because the Pioneer with a two-foot rise in tide is not getting any buoyancy; the buoyancy is already there, but she is not floating. If she was floating, she would get off the rocks. She was just lightening herself, but not floating. If you understand buoyancy, you are lightening the vessel, but the vessel is still on the spot.

Q. Your conclusion is based because you feel she would not rise appreciably? Is that your feeling, that she was up so high the extra rise in tide would still leave her sitting firmly on the bottom?

A. I said the vessel was rolling from side to side in my earlier testimony, and I believe the roll was from 5 to 10 degrees. With the rise in tide and the slight increase in buoyancy, the vessel is going to roll in a greater arc, and as she rolls in a greater arc she is going to do more damage to her hull because it was pounding on the rocks.

Q. If the rise in tide would have the effect of lifting the Pioneer, or any portion of her, free from the water, then the danger of her touching the rocks would be less great; [82] isn't that correct?

A. If they had a 12 or 15-foot tide. A tide occurs about four times a day. There are two rises and two falls of tide. Each rise and fall comes in approximately a 6-hour period, and I assume from that that there was a lapse of almost two hours from the low water to the increase in tide, and in the remaining three or four hours there wouldn't be enough rise in tide to justify my changing my opinion.

Q. If a two foot rise in tide would have the effect of lifting the Pioneer any distance in the water, it is

(Testimony of Matt Berry)

your opinion though, I take it, that would reduce the risk of at least that much?

A. Are you trying to get me to form an opinion?

Q. Yes.

A. If you asked me to form an opinion, as I told you, I said in the additional four hours in that rise in tide I didn't believe it would cause enough rise to float that vessel. I don't believe so.

Q. I have asked you to assume the rise in tide would have the effect to float the Pioneer to some degree, possibly not to free her entirely. In that event I think I am correct in saying that I understand your testimony to be that in that event the likelihood of the Pioneer touching the rocks would be reduced. Am I correct?

A. You mean touching the rocks and the rolling effect? [83]

Q. Touching the rocks on her sides, if there were any rocks on her sides, when she rolled?

A. She would touch the rocks more on a larger arc.

Q. But if she actually floated in some degree, the arc would not be increased; is that correct?

Mr. Lande: I object to the use of the word "floated." I don't know if he means increased buoyancy or floating free. I don't know just what Mr. Verleger has in mind.

Mr. Verleger: There is some portion of the Pioneer, according to the exhibit, which shows a good deal higher out of the water than her stern, and I think it is conceivable, even if it would not free her entirely, that it would float her in part. She might be caught somewhere and she would be lifted and there would be more water underneath her, and under those circumstances it seems to me she would be less likely to touch any rocks because she would be farther above them.

(Testimony of Matt Berry)

The Court: Wouldn't it depend upon the arc which she followed in her rolling?

Mr. Verleger: Yes. As I understand it, she was rolling 5 to 10 degrees. The witness has testified that if the tide rose and her buoyancy was still enough to lift her in any portion clear of the water, then the effect would be merely to increase the arc in which she rolled, because of an increase in her buoyancy. The point I want clear, and which I think follows from that, is that if she was floating in any degree [84] the effect would be not to increase the extent of her arc, but to increase the amount of distance between the vessel and any rocks that might be in the neighborhood. Possibly it is unnecessary to go further in that connection.

The Court: Wouldn't that be a matter of deduction, if those elements were present and the keel of the ship were raised out of the sea? With some knowledge as to the character and location of the rocks, wouldn't it be self-evident that she would be elevated?

Mr. Verleger: It seems so to me, sir, but I think the witness' testimony is that increased damage would occur as the tide rose, and that seems to be based on the assumption that the water would rise about the vessel but the vessel would remain nevertheless firmly situated on the rocks. I want to be very clear that is the assumption on which he gives his testimony.

The Witness: That is correct. I assume that because of the vessels that I worked on in salvage when they were left on the rocks and there was an increase in tide, and they would always sustain more damage than if they were pulled off immediately. That is what I base it on. I base my statement on past experience. That is the only thing I have to go by, is past experience in similar cases.

(Testimony of Matt Berry)

Q. By Mr. Verleger: But the immediate question, I think, was the probability of the sides of the Pioneer touching [85] rocks rather than the keel, which was already in contact with the rocks touching them?

A. That's right.

Q. And in order to have such contact you would have to have an increased roll, and, coincidentally, no substantial increase in the amount of water beneath the keel at any point on the part of the Pioneer, and I think I am correct in saying your testimony is based on the assumption that as the tide rose, there would be a rise in water about the Pioneer, but the keel of the Pioneer would not in any portion float above the rocks?

A. I didn't say that. I said with the rise in tide and the slight increase in buoyancy. I based all my statements on a slight increase, which was a very few feet. A vessel of that type draws approximately 9 to 10 feet of water. I don't know exactly what her draft was, and I assume the tide has risen two feet from the low water until the time we arrived. That is assuming the high water is not enough rise in tide to take care of anything but doing more damage to the vessel, with the increase in tide, and I base that on my experience.

Q. And if it was true that the remaining rise in tide, the rise in tide actually while the Pioneer was there, would be sufficient, and possibly for a brief period further, would be sufficient to float her off in whole or in part, then a [86] different conclusion would follow that in all probability the vessel would not be greatly damaged?

A. You said "if."

Q. Yes.

A. But it is not enough—there is not enough rise in tide to conclude that, in my opinion.

(Testimony of Matt Berry)

Q. But the only reason you say the increase in damage is probable is because you do not believe the rise in tide would be sufficient?

A. Correct. It is published in the United States Coast and Geodetic Survey book, and you can read it. It tells you the tide for that day would be a certain number of feet, and that book does not lie.

Q. That tells what the rise in tide is, but does not tell us what the effect of the rise in tide is going to be. If the boat was sufficiently out of the water that the rise was not sufficient, nothing follows, obviously, but if a little more rise would do it, it is possible she might have floated clear. I explain that merely because the single point I am after is this: that if the effect of a further rise in tide would be to lift the Pioneer clear, your assumption as to extra damage would not follow; is that correct?

A. I still stay with the first statement I made, that there was not a sufficient rise in tide left—

Q. Let me interrupt. [87]

Mr. Lande: Let the witness finish his answer.

Mr. Verleger: All right.

The Witness: If it doesn't pertain to the case, if it was a different circumstance and a different tide table, it would be a different story. I am only stating in the Pioneer case, and not another tide. It was only the tide that was there that evening. That is what the book tells me, and I can't change my statement.

Q. By Mr. Verleger: I think, Mr. Witness, you are still not answering.

A. You say things was different.

(Testimony of Matt Berry)

Q. You have to answer my question. I think I am correct in stating it is necessary to make these assumptions.

The Court: Proceed.

The Witness: I just can't state it differently. I don't understand what he is trying to drive at, sir.

Q. By Mr. Verleger: In your experience in salvaging vessels in the Pacific, was it common for you to attempt to pull a boat off a reef simply by the power of the propeller of the vessel pulling, or did you ordinarily cast anchors and use special machinery to try to take it off?

A. It depended on the situation and what orders I received.

Q. What rank did you hold at that time?

A. A Chief Warrant, a Commissioned Warrant Officer, File [88] No. 350531.

Q. Isn't it true, Mr. Berry, that a vessel pulling merely by the use of its own screw, without an anchor cast, against a ship that is fast aground does not ordinarily have power enough to take off a vessel without the assistance of a rise in tide?

A. In certain cases yes, and in certain cases no. It just depends on the case. Every case is different, and every grounding is different.

Q. If a vessel is hard aground on a rock, and substantially out of water, isn't it true that it is very unusual, at least for a towing vessel, to have sufficient power to take that vessel off?

A. Well, I believe in over 70 tow jobs we only resorted to that method three or four times, and we used this system.

(Testimony of Matt Berry)

Q. The greater portion of those ships were landing type boats, were they not?

A. We had up to 300-foot LSTs.

Q. And most of those boats had bottoms especially made to touch ground, and which would permit them to be removed easily?

A. A percentage of the ships were PCs and SCs, which have the same type of bottom as the purse seine. They have a rounded bottom identically the same as the screws use, the same [89] as the purse seine type.

Q. But a great majority of the vessels were flat-bottom boats that you were concerned with in your operations?

A. Seventy-five per cent of them were.

Q. Mr. Berry, in determining the position of the Pioneer against the shore line, were you actually able to see the shore line?

A. The lights from the shore and the breakers against the beach, yes. The highway was so close you could see the headlights from the automobiles, and you could see the beach.

Q. Where was the Pioneer with reference to the Laguna Hotel, or could you see that?

A. Well, I wasn't watching for the Laguna Hotel. I don't even know where the Laguna Hotel is.

Q. Did you, or, do you know the power of the North Queen?

A. 300 horse-power Atlas Imperial 320. It is 300, rated as 320, an every-day, ordinary Atlas.

Q. When you came forward and took the first strain of the Pioneer, prior to the time the line broke, am I

(Testimony of Matt Berry)

correct in saying you came forward slowly until the line was taut, and then came ahead with full power?

A. A gradual increase of power, yes, sir.

Q. At the time the line broke, you had substantially no way on ahead? [90]

A. "No way," I don't understand. At the time the line parted, could you clarify that "no way on ahead"? I think I know what you are driving at, but I am not sure.

Q. At the time the line parted, was the North Queen going forward?

A. Well, if it wasn't going forward, the line would not have parted.

Q. I don't mean—

A. That is a very funny question to ask.

The Court: She was trying to go forward?

The Witness: You wouldn't have parted the wire unless there was a strain on the wire.

Q. By Mr. Verleger: There is no doubt, Mr. Berry, that the wire wouldn't part unless there was a strain on it. The question is whether you were pulling with the line taut, in which event, of course, you would not necessarily be going forward, although you would be exerting a lot of force against the wire, or did it part at the moment the line became taut?

A. It parted as soon as it parted. As soon as it parted we noticed the parting, but during the excitement we will assume—we don't assume—I know the vessel was not going ahead, because if it was going ahead the Pioneer would have moved off the rocks and the line

(Testimony of Matt Berry)

would not have parted. That is like saying something can't be moved against something that can't be pulled, or something that can't be pulled—an [91] indestructible force against an immovable object. But that wasn't the case.

Mr. Verleger: That is all, Mr. Berry.

Q. By the Court: Mr. Berry, just a question or two. Were you there during the entire operation of the salvage?

A. Yes, sir.

Q. From its commencement to its conclusion?

A. Yes, sir.

Q. Were there any other ships there that participated in the movement?

A. After the wire had parted in the first operation there was no other vessel there, but after we had secured the wire again on the second operation and were towing, another vessel arrived at the scene. It was on our starboard bow, I would say about 200 yards, or, 100 yards away from us. I think it was the fishing vessel Sunlight. In fact, I know it was because my brother was on that vessel. She came in close towards us, and it seemed that just before she had gotten in too close, I would say 100 yards or so, we had freed the Pioneer, and that was all. We released the end of our towing wire and hawser, and then I think I noticed the name of the vessel at that time. I didn't know which vessel it was until after we had freed the Pioneer, and then I noticed it was the Sunlight because my brother hollered to me from the other vessel. Then I noticed it was the Sunlight. She came there about three or [92] four minutes, maybe four minutes or so, before we freed the Pioneer. She was on our starboard bow, coming up the coast.

(Testimony of Matt Berry)

Q. You know where Dana Point is? A. Yes.

Q. Well, regardless of the points of the compass, and I don't know what they are there, but taking the coast towards San Diego, where was the ship in distress, the Pioneer, in relation to Dana Point?

A. It was more towards San Pedro, towards Los Angeles Harbor. Dana Point is further down, and Newport is farther up here, and the place was in between Dana Point and Newport.

Q. Then this Laguna Hotel is down the other way from Dana Point? A. Is it?

Q. Well, I think so.

A. Then that is what I assume. This place was above Dana Point.

The Court: That is all.

Mr. Lande: Step down, Mr. Berry.

(Witness excused.)

Mr. Lande: Captain Varnum, please. [93]

CAPTAIN MYRON VARNUM,

called as a witness by and on behalf of the libelant, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: Be seated, please, and state your name.

The Witness: My name is Myron Varnum, M-y-r-o-n V-a-r-n-u-m.

By Mr. Lande:

Q. Capt. Varnum, what is your occupation, please?

A. Master mariner.

Q. Are you retired at present? A. That's right.

(Testimony of Captain Myron Varnum)

Q. Now, how long have you been a master mariner?

A. Fifty years.

Q. And what license do you hold?

A. Unlimited.

Q. When did you first receive your unlimited master's license, approximately?

A. Somewhere around 1910, I think.

Q. What type of vessels have you worked on since 1910?

A. Freight ships, tugboats, salvage vessels.

Q. Will you tell the court the experience you have had on salvage vessels? Tell the court what you had.

A. I have been on a salvage tug for 14 years, on one boat, and three years on another boat, for a company called [94] Merrick, Chapman & Scott.

Q. What type of company was that?

A. A salvage company, marine salvage.

Q. Are they considered one of the large ones in the United States?

A. They are.

Q. Perhaps the largest salvage outfit?

A. Well, in the United States.

Q. Where did you have your salvage experience with Merrick, Chapman & Scott?

A. In San Pedro, and also on the East Coast, and in Tampico, Mexico.

Q. What type of salvage operations were you engaged in?

A. Well, we had an assortment of all kinds of ships, large and small.

Q. You were working on vessels all the time?

A. Yes, sir.

Q. In what capacity did you serve on that salvage boat?

A. As master.

(Testimony of Captain Myron Varnum)

Q. Did you have any salvage experience other than with Merrick, Chapman & Scott? A. No.

Q. Did you have any salvage experience while you were operating a salvage boat for the Navy? [95]

A. This salvage boat I worked on for the Navy was owned by Merrick, Chapman & Scott.

Q. I see. Was it a Navy salvage boat?

A. It was a Navy mine ship that was converted.

Q. What was the name of that boat?

A. The first one was the Peacock and the second one was the Viking.

Q. Is the Viking in service now? A. Yes.

Q. Is she the salvage vessel in the San Pedro Harbor now? A. She is.

Q. Have you had salvage experience up and down the coast between Laguna Beach and San Pedro, and down the coast?

A. Yes, from San Francisco to Cape San Lucas.

Q. Have you had any experience with vessels known as purse seine fishing vessels? A. A few.

Q. Have you had any experience with vessels of like size and tonnage? A. Yes.

Q. Very many? A. Quite a few.

Q. Have you had any experience with vessels such as that that were grounded on the rocks, stranded? [96]

A. Yes.

Q. Captain, I will show you the tide tables.

Mr. Lande: We have stipulated to the tide tables, I think?

Mr. Verleger: That is right.

Q. By Mr. Lande: Now, Captain, I will give you a hypothetical question. I want you to assume that a

(Testimony of Captain Myron Varnum)

purse seine fishing vessel of 183 gross tons was sailing on the coast off Laguna Beach, California at about seven knots, and that at about 7:00 P. M. on January 9th, 1947, the vessel struck a rock ledge or shelf at a place anywhere between 150 yards and $\frac{3}{4}$ of a mile offshore and was stranded on the rocks, and that at the time of the stranding the vessel struck with such force and in such a manner that the bow was raised approximately 3 to 4 to 5 feet out of the water, and that the rest of the keel was resting on the rocks to its entire length; and assume that in the stranding the keel of the vessel was damaged in its entire length, that the keel shoe, the forefoot, the stem band, the forefoot sheathing, the fathometer hull fitting box, the caulking in bottom butts and seams, the rudder, the quadrant and steering gear, the rudder stuffing box, the propeller blades, tail shaft, stern bearing and stuffing box, and the screens on the sea suction were damaged; and assume that when stranded the position of the vessel was parallel to or 40 to 45 degrees off the shore- [97] line with its bow in towards the shore-line; and assume that on the day of the stranding the low tide was at 5:32 P. M. and the next high tide at 12:08 midnight, and that there was approximately a $5\frac{1}{2}$ -foot rise in tide from the low to the high tide; and assume that there were moderate ground swells at the time of the stranding and afterwards, and that after the stranding the vessel was rocking from side to side with the swells with about a 10-degree rocking, rocking with the swells and working on the rocks.

Now, Captain, assuming that to be the situation of the vessel when stranded on the rocks, in your opinion what

(Testimony of Captain Myron Varnum)

damage to the vessel could reasonably be expected to follow from the stranding?

A. If she was left on there she would pound her bottom out.

Q. I beg pardon?

A. If she were left on there, she would pound her bottom out.

Q. Will you explain to the court the reasons back of your statement, why you feel that way?

A. Well, if she was grounded on rock bottom, and she was rolling, there is nothing to prevent her from breaking her planks, and filling with water.

Mr. Verleger: Would the witness speak a little louder, please? [98]

The Witness: I said if you left her on there, on the rocks, and she was rocking on there, there was nothing to stop her from breaking her planks in and damaging her planks so that she would be a total loss if you did not take her off.

Q. By Mr. Lande: Now, under the facts I asked you to just assume, Captain, what would be the effect of a rise in tide, that is, the effect of a rise in tide on the danger to the vessel from 7:00 o'clock until midnight, high tide? Do you understand my question?

A. Yes. Of course, the tide—she would float with the tide if she wasn't damaged as yet, and if she floated, lifted, she would pound harder if the sea was making her rock. Of course, if she floated, she would pound harder until she flooded altogether.

Q. Now, assume, Captain, that she went on at about 6:30 and assume that aid came to her at 7:30, and assuming now that your low tide was from 5:30 and from 7:30

(Testimony of Captain Myron Varnum)

on, as the tide rose a matter of maybe three or four feet, explain, please, how that rise in tide would affect the pounding of the vessel and working of the keel on the rocks, and the working of the surf, and of the ground swells on the vessel.

A. Well, the tide is lifting the ship and gives her more buoyancy and so she pounds harder until she floats or pounds her bottom out and fills with water.

Q. In other words, there is that danger of one or the other [99] happening?

A. Oh, certainly.

The Court: Nothing else could happen, could it, Captain?

The Witness: That's all there is to it.

The Court: Either one or the other thing is the eventuality?

The Witness: Well, certainly.

Q. By Mr. Lande: Now, can you give the court an idea of the type of action the working of that hull and keel has on rocks, when it is lying parallel to the ground swells stranded on rocks, and is swaying back and forth and working on the rocks?

A. Well, I couldn't say, except by the rocking she would keep breaking in her keel and planks, whatever there was.

Q. Was time an important element in a situation like that, of the vessel I gave you in the hypothetical question?

A. Absolutely.

Q. Now, explain to the court what you mean by that. How much time, minutes or hours or what?

A. Well, I mean this, that he should get help as soon as he could, to get off the rocks, and, in the meantime,

(Testimony of Captain Myron Varnum)

if help weren't coming, he should do what he could to get her off himself. But that is the first thing they should do, to try to get the vessel clear, and I would blame him if he [100] didn't.

Q. In other words, in your opinion, Captain, could the master of that vessel, so stranded, with reasonable safety have waited for the high tide to float himself off?

A. Well, I wouldn't have waited. if I could have got help. Anyway, he wasn't sure he could get her off at all with the help he did have.

Q. In other words, in your opinion there would be no assurance that even high tide would float her off?

A. A lot of things can happen from the time he went on before he would have any means of pulling himself off with his anchors. He had no more propeller, he had broken his blades, and in the meantime, she is pounding and might not be fit to take off when he got his anchors out.

Q. Now, Captain, in this operation let's assume that a vessel came to the aid of the stranded vessel that I have just told you about in the hypothetical question, and that the vessel that came to the aid was a purse seine fishing vessel of approximately 175 tons, with the usual and customary rigging that a purse seine vessel has, and they used a $\frac{5}{8}$ -inch wire cable to pull this ship off, the stranded vessel off, and that they attached the cable to their bitts aft, and then used a line from the boom to the cable to hold it up off of their fishing nets. In your opinion, Captain, was the vessel who was coming to their aid subjecting its rigging [101] and men on the ship to danger in attempting to pull the vessel off of the stranding?

A. I should say they would be, yes, more or less.

(Testimony of Captain Myron Varnum)

Q. Explain to the court why?

A. Well, in the first place, they are not rigged up for towing and pulling that way, and by having to hold the towing wire over the net in the boat, they were putting a heavy strain on the boom, and with that kind of light rig might be carried away. You have to use your judgment in how hard you pulled.

Q. Captain, let's assume that the men that came to the aid of the vessel that I have told you to assume was stranded took a long length of $\frac{5}{8}$ wire cable, and worked and pulled on it, and that when he pulled on it he went from 5 to 10 degrees to one side, then pulled, and then swung his vessel and went 5 to 10 degrees to the other side and pulled on the stranded vessel from the other side, and so worked on it from opposite angles until she came free. In your opinion, as a salvage man, was the master and crew of that vessel exerting skill?

A. That is what is done generally, which is to try to loosen the vessel, to loosen her on her bed, so that she will come off, where a straight pull won't do it.

Mr. Lande: You may cross-examine. [102]

Cross-Examination

By Mr. Verleger:

Q. Captain, I would like you to assume that instead of stranding at 7:30, the Pioneer stranded at around 6:30, that low tide is at approximately 5:30, and that high tide was approximately at 12:00; that after she stranded the water line of the Pioneer was approximately one foot out of water at the bow, when she had been approximately even with the water line before she stranded. Do you think it is probable under those circumstances that the rise of tide, with a 5-foot rise of tide

(Testimony of Captain Myron Varnum)

anticipated, or nearly so, would ultimately lift the vessel free?

Mr. Lande: I object to that, to the 5-foot rise, if she went on at 6:30 and low tide was at 5:30.

Mr. Verleger: We will correct that and say a 5-foot rise in tide between 5:30 and 12:00 midnight.

Mr. Lande: And that she went on at 6:30.

Mr. Verleger: Correct.

The Witness: Now, what was it you asked me?

Mr. Verleger: Would you read the question back, please?

(The question was read.)

The Witness: I believe she would if she wasn't too badly damaged.

Q. By Mr. Verleger: You may also assume that the vessel remained on the strand from approximately 6:30 to [103] somewhere between 8:30 and 9:00 o'clock, that about 500 gallons of water stowed in the foreward part of the ship had been jettisoned, and that during that period while the keel had been crushed and pounded, she had sprung no leaks and was taking no water. Do you think under those circumstances it could be anticipated that she could come free in the near future, and in all probability so soon as to suffer little further damage?

Mr. Lande: I object to that on the ground that it assumes facts not in evidence and is improper cross-examination. These facts do not appear in evidence.

Mr. Verleger: If the court please, I am going to connect them up. Those facts will be in evidence, and it seems to me worth while, since the captain has been called as an expert, to know what his opinion is on the facts that may ultimately be established.

(Testimony of Captain Myron Varnum)

The Court: I don't think it is proper to call the captain as your expert unless you pay him for doing it.

Mr. Verleger: I didn't really wish to do that, your Honor. The point I did wish to make clear was that—

The Court: I think the features about taking water are not in evidence yet, these features you have incorporated in that question about the taking of water and about the jettisoning of water, and so forth. I think I will sustain the objection. It may be that you will want to call the captain [104] later as your witness after you have elicited sufficient supporting facts.

Q. By Mr. Verleger: Do you think, Captain, on the facts already placed before you, that the vessel was approximately one foot out of water at the bow, that she went on at approximately 6:30 and came off at approximately 8:30 or 9:00 o'clock, that low tide was at 5:30 and high tide at 12:00,—do you think she was probably nearly ready to come off, in any event?

Mr. Lande: Just a minute. I object to that, that that is not evidence and assumes facts not in evidence. It is not in evidence that it was one foot out of water, and the evidence is that it was anywhere from 3 to 5 feet out of water at the bow.

The Court: Captain, let me make an assumption with you, which probably will come within the facts as they have been elicited so far, without indicating any view on the weight of them at all. Have you heard the evidence in this case so far?

The Witness: I have tried to; I have some of it.

The Court: Assuming after this salvage operation that the disabled vessel made her way to San Pedro under her own power without any difficulty. What would

(Testimony of Captain Myron Varnum)

you say, then, about the imminency of her being destroyed by remaining on the rocks?

The Witness: Well, your Honor, it was the master's place [105] to get the ship off the rocks just as soon as he could, in any way that he could, and the insurance underwriters would uphold him in doing it. If he had left her there he wouldn't know what would happen, he wouldn't know how much damage was under her, she might have punctured herself at any time and be a total loss.

The Court: It is in evidence that he didn't leave her there.

The Witness: Yes.

The Court: And called to his assistance another ship,—

The Witness: That is right.

The Court: —and that ship claims the salvage. Assuming that the disabled vessel after the incident that caused her to become stranded upon the rocks was extricated from the rocks and made her way to her port without any further assistance herself after she had been released from the rocks, would you think that the damage that had ensued to her bottom was such that she couldn't have been raised by the tide had she remained on the rocks?

The Witness: Well, I couldn't estimate that because you don't know how much damage was done while the tide was rising. As it was rising, she was going to pound harder.

The Court: That is all.

Q. By Mr. Verleger: Captain, in your opinion, is it possible ordinarily for a vessel pulling with her screw only, [106] without an anchor down, without getting

(Testimony of Captain Myron Varnum)

any fall through her winches, and anything of that sort, to disengage a vessel that is hard aground with her bow 4 to 50 feet out of water, and without any further qualification?

The Court: You had better read that again. I don't know that I followed it.

(The question was read.)

The Witness: If you have got power enough, you can pull her off, or pull her all to pieces.

Mr. Lande: What was the answer?

(The answer was read.)

Q. By Mr. Verleger: Isn't it true as a general rule, though, as a salvage man, that pulling with simply the screw of the vessel is a relatively ineffective way of pulling against a vessel hard aground for the reason that your screw is quite apt to end up simply boring a hole in the water?

A. Well, I have pulled lots of them off that way myself.

Q. In your opinion, assuming a vessel of around 170 tons on the rocks along the full length of her keel, with her bow 3 to 5 feet out of water, when the vessel was only pulling against a $\frac{5}{8}$ -inch steel wire, do you think such a vessel pulling on such equipment can pull such a ship off the strand?

Mr. Lande: Just a minute. I object to that, your Honor, because it is asking him the very thing that was done here. [107] That is what was done.

Mr. Verleger: That question is highly important, your Honor, because it bears very definitely on the question, as I think in fact was the case, that the tide had lifted her to the point where the vessel was about ready to come off anyway. If a vessel can't pull off a

(Testimony of Captain Myron Varnum)

craft that is hard aground in the style the libelant suggested, then it is clear the vessel wasn't hard aground the way they suggested.

The Court: Overruled.

Mr. Verleger: Yes. It is important just to know the relative conclusion.

The Court: You may answer that, Captain.

Mr. Lande: Will you read the question to him again, please?

(The question was read.)

The Witness: I don't know.

Q. By Mr. Verleger: You don't know?

A. I don't know, because if she was hard aground like that, he couldn't pull her out with a $\frac{5}{8}$ -inch wire.

Q. Captain, in rigging a line for the purpose of pulling against a stranded vessel, isn't it regarded as being extremely important so to rig the line that it will clear without damaging the pulling vessel's rigging if the tow line happens to break?

A. From the evidence I have heard, this was rigged [108] clear. When the line parted and his falls fouled, he wasn't to be blamed for that.

Q. Your claim is that the rigging in this situation was satisfactory because the falls were so set that they could be released the minute the towing line broke? Is that it, Captain?

A. Well, that is safety.

Q. If, in fact, it was impossible or impractical—please strike that. If, in fact, it was not conveniently feasible by releasing the fall promptly to avoid damage to rigging when the towline broke, would you have thought some other precautions were required?

A. I don't know of any he could make.

(Testimony of Captain Myron Varnum)

Q. Captain, I show you Libelant's Exhibit 3. You are familiar with the way in which the line came down from the boom of the North Queen to the towline?

A. Yes.

Q. The testimony is that that fall was secured by a steel chain wrapped around the line. Wouldn't it have been possible to use a manner of securing that fall that would permit this line to slide free if it broke?

A. No, I wouldn't rig it that way. He rigged it right.

Q. Wouldn't it have been possible to rig it so it would?

A. Yes, but when it slides free you would let the hawser come down and tear the nets. He had to make that fall fasten [109] in a certain place. He put a chain stopper on it and done the proper thing.

Mr. Verleger: I think that is all, your Honor.

Mr. Lande: No further questions.

The Court: That is all, Captain.

(Witness excused.)

The Court: I think the court should reorient itself. I have been thinking about that question with reference to the Laguna Hotel. The Laguna Hotel is towards Newport Beach instead of towards Dana Point, as the court indicated. I think I misled Mr. Berry there.

We will take a recess for about 10 minutes, gentlemen.

(A short recess was taken.)

The Court: Proceed.

Mr. Lande: May I call Mr. Xitco, please?

The Court: What is it for?

Mr. Lande: To establish the value of the North Queen.

The Court: Yes. [110]

ANDREW XITCO, JR.,

recalled as a witness on behalf of the libelant, having been previously duly sworn, testified further as follows:

Direct Examination

By Mr. Lande:

Q. Mr. Xitco, you are one of the owners of the North Queen, are you not? A. Yes, I am.

Q. At the time of the salvage service on January 9th, what was the fair market value of the North Queen, in your opinion?

A. Around \$170,000, the gear and all.

Mr. Verleger: I didn't hear the answer.

(The answer was read.)

Mr. Lande: That is all.

Mr. Verleger: I have a question on cross-examination.

Cross-Examination

By Mr. Verleger:

Q. How long have you owned the North Queen?

A. Well, I have owned it since Christmas, last Christmas.

Q. Have you been buying or selling, or have you been in a position to know the prices for which fishing boats generally have sold in and about San Pedro?

A. I didn't quite understand that question.

Q. I will withdraw the question. Have you had any [111] connection with sales of fishing boats, other than the purchase of your own boat? A. I did.

Q. On many occasions?

A. Well, just prior to that boat I sold one to the Greece government; I mean to the UNRA.

(Testimony of Andrew Xitco, Jr.)

Q. You mean you sold your previous boat to the Greek government?

A. Yes, six months before that, or in March I sold it to them.

Q. Other than that you have had no experience with the purchase and sale of fishing boats? A. Yes.

Q. One further question that does not relate to this particular item, your Honor. Has the North Queen been used for towing purposes recently?

A. Not since I had it.

Q. Isn't it true, Mr. Xitco, that the Pioneer has been used to tow a vessel up from the waters of the Gulf of Mexico?

A. Yes, we did, from the gulf to Guaymas.

Q. So that your original statement that you haven't done any towing is not correct?

A. I mean for towing,—it is not in the towing business. We fish with it.

Q. But you have towed other fishing boats? [112]

A. The other boat was sinking and we had to tow it to port.

Q. And you have done that?

A. No, that is the only time in the Gulf that we did that. It was in June, this last June.

Q. It is not uncommon for fishing boats to tow one another when they need assistance?

Mr. Lande: That is objected to as incompetent.

The Witness: It isn't the custom to tow them.

Q. By Mr. Verleger: You say it isn't customary?

A. It isn't.

The Court: Well, if a ship is in distress and you are close to it you usually respond to the call, don't you, whether it is a fishing boat or any other type of vessel?

(Testimony of Andrew Xitco, Jr.)

The Witness: If they send an S.O.S., we will go to her aid. If you are near there, you would respond.

The Court: If the circumstances were such that you might be able to tow her, you wouldn't abandon the derelict, would you?

The Witness: Well, if you could tow her in any possible way, yes.

The Court: When was this other towing operation, from Guatemala, or up the West Coast? Was this after the incident with the Pioneer?

The Witness: Yes. [113]

Mr. Verleger: That is all, your Honor.

Mr. Lande: We will rest the libelant's case, your Honor, at this time.

The Court: Proceed.

Mr. Verleger: I am going to call Marion Joncich. In that connection I would like to state that I would like to use an interpreter because he speaks English with a great deal of difficulty.

The Court: I don't know who the interpreter is. Is he satisfactory to you, Mr. Lande?

Mr. Lande: This is the first I have heard of him, your Honor.

The Court: Who is the interpreter?

Mr. Verleger: The interpreter is Mr. Zaninovich, and I am willing to qualify him as being familiar with both languages. I would have liked to ask for the regular interpreter, but I didn't know the need for him until quite recently.

The Court: Do you know him?

Mr. Lande: No, but Mr. Xitco can understand the language too, so with the aid of both, I think we will get along.

The Court: So he can check the interpreter.

Mr. Verleger: Is it the practice for the interpreter in this court to take an oath?

The Court: Oh, yes. [114]

Mr. Verleger: Mr. Zaninovich, will you please stand to take the oath?

The Clerk: What language is he to interpret?

Mr. Verleger: The Jugoslavian.

The Clerk: Will you state your name, please?

The Interpreter: Joseph G. Zaninovich.

The Clerk: Now, the witness will stand with you and you will both be sworn.

CAPTAIN MARION JONCICH,

called as a witness on behalf of the respondent, having been first duly sworn, testified through the interpreter as follows:

Direct Examination

The Clerk: You may take the stand, be seated, and give us your name, please.

The Witness: Marion Joncich, M-a-r-i-o-n J-o-n-c-i-c-h.
By Mr. Verleger:

Q. Captain Joncich, will you state the time when the Pioneer stranded?

A. The Pioneer stranded at 6:30.

Q. At that time in what direction and from what port was the Pioneer going?

A. At 6:00 o'clock we were at Newport and started to go east. At 6:30 we hit the rock.

(Testimony of Captain Marion Joncich)

Mr. Verleger: Your Honor, I think I would like to take the witness in English. I think it will go faster, and while [115] his English is pretty poor, I think it will work.

The Court: I think that is desirable always, if you can do so. Mr. Interpreter, you may take a seat there, and we may call on you later.

(Thereupon the witness testified without the use of the interpreter.)

Q. By Mr. Verleger: What was the Pioneer doing when she stranded?

A. Well, we were going east; going east along the coast, look for fish.

Q. Approximately where did you strand?

A. Right outside of Laguna Beach.

Q. About how far off shore?

A. About three quarter of a mile from the shore.

Q. Do you know whether you stranded on—

Mr. Verleger: I don't exactly recollect the name of the rock there.

Mr. Lande: Two Point Rock.

Q. By Mr. Verleger: Do you know whether you stranded on Two Point Rock?

A. Yes. We know after.

Q. Well, do you know whether Two Point Rock was the place where you stranded?

A. After I look on the charts, yes, I see that.

Q. You believe that is the place where you stranded?
[116] A. Yes.

Q. At the time the Pioneer stranded, what was the condition of the weather?

A. It was nice and smooth, just a little ground swell.

(Testimony of Captain Marion Joncich)

Q. After the Pioneer stranded, was she pounding up against the rocks?

A. No, he never moved; just agoing this way about a foot, or something like this.

Q. She rocked a little?

A. Yes, she rolled like that.

Q. After the Pioneer stranded, what did you do next?

A. Well, when boat hit the rock, then I tried to back up, see. I back up three times, and then we can't get off. Then my engineer, Joe Mardesich, he come up and I told him to go call the boats on the radio, if we can get any help to pull us out.

Q. Did you take any steps to try and pull yourself off with your anchors?

A. Then Joe Mardesich going to call up some boats, and I told crew to bring skiff from the stern, to bring to the bow. We figure to put on the skiff, to go dumping outside, you know.

Q. Did you actually put the anchor in the skiff?

A. No. Joe Mardesich come back in about four or five minutes, and he told me that he got the boat.— [117]

Q. The Sunlight?

A. —Sunlight on the radio. Then we stopped with the anchor, you know.

Mr. Verleger: I don't wish, your Honor, to lead the witness any more than I have to, but occasionally—

Mr. Lande: I would rather they not lead him. I will have to object to it.

The Court: If it is clear,—it is clear so far to the court.

(Testimony of Captain Marion Joncich)

Q. By Mr. Verleger: After you got word that help was coming, what did you do?

A. Then I told Joe Mardesich to take some fresh water out, and a few pump out lower, and see if there was any water coming in.

Q. Did you take any steps for the arrival of the boat that was coming,—your boat?

A. When he told me the Sunlight come in, I told crew to put coil rope in the skiff, get prepared to give them a cable.

Q. How long was the coil rope you used?

A. The 125 fathom they got in the skiff, and another we got in the boat.

Q. You had 125 fathom in the skiff. Did you have any rope more than that?

A. There was 125 in the skiff, and there was 100 fathom [118] in the boat.

Q. What did the men in the skiff do with the rope?

A. When we see that boat come in, they start going out, you know, to give them a line.

Q. How much rope did they pay out, in meeting the boat that was coming to your assistance?

A. I figure about 225 fathom.

Q. Then what was done with that rope?

A. Well, after the North Queen come in before Sunlight, the crew take then, you know, the line to the boat. He got the line. They pull out cable on it.

Q. How close did the North Queen come to you?

A. Oh, like by the cable, I got the towline 220-250 fathom, and about 25 fathom left. I can guess by that better than anything else.

(Testimony of Captain Marion Joncich)

Q. Did the North Queen come any nearer to you than she was when she received the rope which your skiff took to her?

A. Well, after we put that line, the cable, in the bitt and that cable bust, he stop right away and he tie cable again. He back up a little bit, but we never slack any cable from the boat, because we have the slack 225 fathom.

Q. Is the closest he came to you about the amount of line that you had paid out to the North Queen?

A. I don't think was any closer than 200 fathom from us. [119]

Q. What was your connection, or what was your job on board the Pioneer?

A. I am the captain of the boat Pioneer in the winter and summer.

Q. How long have you been a fishing boat master?

A. Well, from 1928.

Q. In your experience, has it been common for fish boats of the size and type of the Pioneer and North Queen to tow one another?

Mr. Lande: I object to that, your Honor, as incompetent, irrelevant and immaterial. This isn't a tow job. This is a salvage and a pulling off of a strand.

Mr. Verleger: There has been testimony, your Honor, that these boats are not equipped for towing, and I think the frequency with which they tow bears upon the extraordinariness of the operation undertaken by the North Queen.

Mr. Lande: There was testimony of the salvage.

Mr. Verleger: There was testimony they were not equipped for towing.

Mr. Lande: And salvage.

(Testimony of Captain Marion Joncich)

Mr. Verleger: And a towing job of this sort or a salvage job of this sort is apparently like a tow job because it involves pulling on a line.

Mr. Lande: I think that is counsel's expert statement without any support in the evidence that this is merely a [120] towing job. The statement by him is that they just pull on a line. But I think the question is immaterial, as to the towing part.

The Court: We have had enough argument. The objection is overruled. Now, read the question.

(The question was read.)

The Witness: Well, I used to tow before somebody else. I do last year the Betsy Ross. I tow him. He was broke down, down in the bank, and I tow him to the beach, Catalina beach.

Q. By Mr. Verleger: Do other fishing boats frequently assist one another, by towing one another?

A. Oh, all the time we help one another, you know.

Q. Do other fish boats frequently assist one another by trying to pull one another off the strands?

A. All the time. That is the law.

Mr. Lande: I object to that, your Honor, and ask that it be stricken. I would like to call the court's attention to some law on that point. That very same question came up in a District Court case in Washington, and I think it was Judge Neterer who wrote the opinion. There was a question whether or not where a libel for salvage service was made, with the defense that it was a customary thing among the fishermen to aid each other, and the court did not receive evidence, the court said the custom relied upon, if it exists, is against public policy. [121]

(Testimony of Captain Marion Joncich)

The Court: We are not speaking of the question of obligation. We are speaking as to how it reflects itself upon the type of service rendered by the salvor.

Mr. Lande: If that is so, all the more reason that it would be inadmissible, because he is asking him about towing vessels that are free on the high seas, and here we have a vessel that is stranded on the rocks.

Mr. Verleger: I think as to that, if the reporter will read the last question I think you will find you misunderstood it.

The Court: I don't think there is any question about the relevancy. The objection is overruled. Read the question, please.

(The question was read.)

The Court: If you want to have stricken the part of the answer, "That is the law," why, that will go out.

Mr. Lande: I so move, your Honor.

Mr. Verleger: No objection, your Honor.

Q. By Mr. Verleger: While the North Queen was assisting the Pioneer, did any other vessel put in an appearance—I will strike that, your Honor.

While the North Queen was assisting the Pioneer, did any other boat come there?

A. Yes. Another boat, as I says a minute ago.

The Court: The Sunlight? [122]

The Witness: The Sunlight. He was right alongside of me, about 100 feet from the North Queen on the west side.

Q. By Mr. Verleger: Approximately how long after the North Queen commenced operations did the Sunlight arrive?

(Testimony of Captain Marion Joncich)

A. Well, he got the cable first time, and he tied to the bitt. The cable bust, then he fix it up again, you know, the cable. Then at the same time just that Sunlight come in.

Q. Did the Sunlight come in before the North Queen commenced pulling the second time?

A. No, I think he come in before he pull a second time. He was just tied up the cable, when he come in.

Q. Were any preparations being made at the time the Pioneer came off, to take a line to the Sunlight?

Mr. Lande: Objected to as incompetent, irrelevant and immaterial, as to what preparations were being made, or what was contemplated.

Mr. Verleger: I think the cases have spoken of the fact that other assistance was available is relevant. The fact that a line was taken, and the fact that another boat was ready with its power in trying to get the Pioneer off certainly goes as to whether the special strain, so great as to risk the North Queen, had to be taken.

Mr. Lande: The answer is that it was taken, and if another vessel did join in the salvage operation, they would [123] have to pay two vessels instead of one. So I can't see that it adds or detracts so far as the total of their obligations on the salvage are concerned.

The Court: The only way it throws any light on the inquiry is on the question as to the imminence of the peril and the degree of skill of the claiming vessel. Every feature that is present at the scene may throw some light upon that, so as to motivate the court in the exercise of its discretion as to what the measure of compensation should be. That is the reason that the case which you

(Testimony of Captain Marion Joncich)

cited in Washington is not applicable. It does not exonerate, it does not remove the obligation to pay the salvor, but it throws light upon the activities which the salvor is claiming, especially where he is claiming a large amount of salvage. Overruled. Read the question, please.

(The question was read.)

The Witness: When the North Queen tied up cable second time, then I told crew in the skiff to take another line from the boat to the Sunlight, in case the North Queen can't pull us out, that they can give another cable to him.

The Court: He did take another cable?

The Witness: We got them in the boat, another cable to give to him.

The Court: But did you give it to him?

The Witness: No. He just take rope. He put them in the [124] boat.

Q. By Mr. Verleger: Approximately how long did the North Queen pull against the Pioneer the second time before the Pioneer came off?

A. Oh, about four or five minutes, I think. That time he started going off. The cable bust and then he tied up, but the second time he started pull, he pull four or five minutes.

Q. Did the North Queen pull in one position, or swerve from side to side?

A. It was in the night, you know, and from 200 fathom away. I don't know how much he swing, but he used to do that before. I don't think he swing so much.

(Testimony of Captain Marion Joncich)

Q. When the Pioneer came free, were her engines in good running condition?

A. Yes. It was an easy run, everything O. K. Then when he pull us out about a quarter of a mile, he talked to Joe Mardesich, my engineer, and the telephone operator, he talked on the telephone to them. I said, "Tell them to stop, to let go cable." We then go to pull up our cable, and I going to maneuver with propeller and cable, if everything work. If everything work all right, I let them know.

Q. And did everything work all right?

A. Everything all right, and we proceed home, and he proceed fish. Then I looked exactly my time, and was maybe a [125] few minutes off, but was about 7:00 o'clock, five minutes after seven, on my clock.

Q. That was when?

A. When he was through with us.

Q. Was the Pioneer leaking when she got off?

A. No.

Q. Did the Pioneer get into San Pedro satisfactorily on her own power?

A. Yes, we come into San Pedro without any trouble.

Mr. Verleger: That is all, your Honor.

Cross-Examination

By Mr. Lande:

Q. Now, when the Betsy Ross was towed by you, Mr. Joncich, you received a salvage payment for towing that vessel, didn't you?

A. Yes. I will tell you on that job we was—

Mr. Verleger: Your Honor, I object on the ground that this has no relevancy here. I don't mind seriously, but I don't see that it will help us any at the present time.

(Testimony of Captain Marion Joncich)

The Court: I suppose if he had assisted in salvaging he would be paid. Usually they ask that they be paid, if that is what you want to know.

Mr. Lande: I wanted it to be understood that it wasn't gratuitous.

Mr. Verleger: If there is any question about that, I [126] will stipulate that there is no salvage rendered by the fishing boats for nothing.

Q. By Mr. Lande: Aren't you a little mistaken as to the time you came free? Don't you mean 8:00 o'clock?

A. Yes, that is it. I am wrong on that. We come in at 6:30, and he come 7:00 o'clock to us.

Q. That is, the North Queen came to you about 7:00?

A. About 7:00 o'clock.

Q. And you got free at about 8:00?

A. Yes, 8:00. Excuse me.

Q. How soon after stranding did you send out your radio call for help?

A. Oh, about two minutes; after two or three minutes; right away.

Q. Now, if the call was received by the North Queen at 7:12, could you be mistaken that it was about 7:00 o'clock you went on the strand instead of 6:30?

A. 6:30 we going on the strand, and he come exactly 7:30 to us. And my clock maybe was wrong 5 or 10 minutes, but that is the most it can be.

The Court: You mean it only took him a half hour to complete the operation, from the time he came alongside until you came off?

The Witness: That's all.

Mr. Lande: I have no further questions, your Honor. [127]

Mr. Verleger: That is all, your Honor, of Mr. Joncich. I will ask the interpreter to stay for just a few minutes because there is one other witness we may need him for.

(Witness excused.)

Mr. Verleger: I will next ask Vincent Zuanich to come forward.

VINCENT ZUANICH,

called as a witness by and on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

The Clerk: Take the stand, please, be seated, and state your name.

The Witness: Vincent Zuanich, Z-u-a-n-i-c-h.

Direct Examination

By Mr. Verleger:

Q. Mr. Zuanich, what is your connection with the Pioneer? A. I am deck man, skiff man.

Q. Where were you when the Pioneer stranded?

A. I am in the skiff.

Q. Where was the skiff? A. That is right.

Q. I say, where was the skiff.

The Court: Where was the skiff?

The Witness: On the stern of the boat.

Q. By Mr. Verleger: And where was the boat?

A. On the rock. [128]

Q. Did the Pioneer have the skiff on board or was it towing the skiff? A. Towing the skiff.

Q. So that the skiff was in the water at the time it struck? A. Was in the water, that's right.

(Testimony of Vincent Zuanich)

Q. What did you do with the skiff after the Pioneer struck?

A. When the Pioneer struck, the skipper called us—

The Court: If you will talk a little louder, please, so that everyone can hear you.

The Witness: When the Pioneer hit the rock, the skipper called crew of the skiff to the bow, get the anchor at the bow.

Q. By Mr. Verleger: Did you go forward to the bow of the Pioneer with the skiff? A. Close.

Q. When you were at the bow, did you see how far above the water level the water line of the Pioneer was?

A. Maybe one foot.

Q. Did you actually take the anchor— A. No.

Q. —of the Pioneer on board?

A. No. Skipper say better take rope.

The Court: I think we had better have the interpreter. [129] He speaks very clearly but he doesn't articulate so that we can get just what he means.

Q. By Mr. Verleger: Did you take the anchor in the skiff? A. No.

Q. What did you do with the skiff after that?

A. Skipper give us coil of rope in the boat and says to bring North Queen rope.

The Court: Will you read the answer, please?

(The answer was read.)

The Court: It will not be necessary to interpret it unless the reporter states she cannot understand it.

(Testimony of Vincent Zuanich)

Q. By Mr. Verleger: What did you do with the rope?

A. I had just one coil in the skiff, and he give us another coil for boat, to give so much slack, another coil.

Q. Did you take the rope out to meet the North Queen? A. That's right.

Q. Did you pay out most of the rope that you had on the skiff? A. That's right.

Q. How close did the North Queen come to the Pioneer while she was assisting the Pioneer?

A. Oh, maybe 200 feet. I mean 200 fathom close, pretty near.

The Court: How many feet do you mean? [130]

The Witness: In feet is 1500 or 1800.

Mr. Verleger: If it helps, your Honor, I believe a fathom is 6 feet.

The Court: I remember that, but I wanted to get his estimate, since he expressed it in both terms.

Q. By Mr. Verleger: While the Pioneer was being assisted by the North Queen, did another boat come to assist the Pioneer? A. The Sunlight.

Q. Did the Sunlight arrive before or after the time when the cable on the North Queen broke?

A. After.

Q. About how soon after?

A. Maybe—I can't say—maybe three or four minutes, five.

(Testimony of Vincent Zuanich)

Q. Did it arrive before the North Queen started to pull on its cable again? A. That's right.

Q. Did you make any arrangements to take a line from the Pioneer to this boat?

A. Yes, I gave a line to Sunlight, too.

The Court: Did the Sunlight take the line aboard?

The Witness: I take from Pioneer to Sunlight. I get the line from Pioneer, a two-inch line, I give it to Sunlight.

The Court: Well, did the Sunlight take the line? [131]

The Witness: Just take it. Somebody haul it. Then Pioneer came off. Threw the line, then somebody holler and say the Pioneer is off.

Mr. Verleger: That is all, your Honor.

The Court: Just a moment.

Cross-Examination

By Mr. Lande:

Q. When you pulled this 1200 feet of Manila rope out, it didn't float on the water as you went along, did it? A. Yes.

Q. Doesn't it sink and take a big bite?

A. No, sir.

Q. Your line floated out there?

A. Floated out on top of kelp.

Q. On top of the kelp? A. Yes, that's right.

Mr. Lande: That's all.

Mr. Verleger: That's all. Thank you.

(Witness excused.)

Mr. Verleger: The next witness is Paul Tipich. [132]

PAUL TIPICH,

called as a witness by and on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: Take the stand, please, be seated, and state your name.

The Witness: My name is Paul Tipich, T-i-p-i-c-h.

By Mr. Verleger:

Q. When the Pioneer stranded, where were you, Mr. Tipich?

A. When the Pioneer stranded, I was in the skiff, in the big skiff.

Q. Did you go forward with Mr. Zuanich in the skiff?

A. Yes, I did.

Q. Did you see where the water line of the Pioneer was with relation to the surface of the water?

A. Yes, it was about a foot above water.

Q. Were you in the skiff when the Manila line was taken to the North Queen?

A. Yes, I was.

Q. How much line, approximately, did you have in the skiff?

A. Well, I would say we had about a coil of rope.

Q. Do you know how much that would be?

A. About 125 fathom. [133]

Q. How large a proportion of the rope did you pay out?

A. We paid out all the rope we had in the skiff, and then paid the rest from the boat.

Q. While the North Queen was assisting the Pioneer, did another vessel arrive for the assistance of the Pioneer?

A. Yes, sir.

(Testimony of Paul Tipich)

Mr. Lande: I object to that as calling for the conclusion of the witness.

Q. By Mr. Verleger: Well, did another vessel arrive?

A. The Sunlight arrived.

Q. Did you make any preparation for the taking of a line to the Sunlight?

A. We got a line from the Pioneer to the Sunlight with the small skiff.

Mr. Verleger: That is all, your Honor.

Mr. Lande: No questions.

The Court: Did the line reach the Sunlight?

The Witness: Yes. One of the fellows come in the big skiff, and he took the line from us.

The Court: I understand that, but did it actually reach the ship itself? Did it go aboard the ship?

The Witness: I believe it did. I believe he went up on the rail with it. [134]

Cross-Examination

By Mr. Lande:

Q. What type of line did you take over to the Sunlight? A. I would say about a two-inch line.

Q. That is a Manila line? A. Yes.

Q. And the circumference is two inches, not the diameter? A. The diameter is two inches.

The Court: The diameter of the rope is two inches?

The Witness: They call it a two-inch line. I really don't know.

Q. By Mr. Lande: Do you know the difference between diameter and circumference?

A. I know the difference between diameter and circumference, yes.

(Testimony of Paul Tipich)

Q. Was it two inches across, in diameter, or two inches in circumference? A. Well,—

The Court: That can be cleared up, I suppose, Mr. Lande.

Q. By Mr. Lande: Can you illustrate to the court about the size of it?

A. I tell you what it is. It is about the size of a cork line, and I would say it is about like that (indicating).

Q. Turn around so that the court can see you. [135]

The Court: Yes.

Mr. Lande: It is about two inches in circumference.

The Court: That was a Manila rope, was it?

The Witness: Yes, sir.

Q. By Mr. Lande: You don't know the tensile strength of that rope, do you? A. No, I don't.

Mr. Lande: How strong it was. All right, that is all.

Redirect Examination

By Mr. Verleger:

Q. I have a further question, Mr. Tipich. Pardon me. What was the purpose for which you took the Manila line to the Sunlight?

A. To take the towline, to take the cable out to the Sunlight. They would pull the Manila rope out—

Q. When the—

The Court: Just a minute. He hasn't finished.

The Witness: I was going to say that they would pull the rope if it would be necessary, and attach cable to it.

(Testimony of Paul Tipich)

Q. By Mr. Verleger: When you were in the skiff, did you observe whether the North Queen pulled straight on the second pull from the Pioneer, or whether they changed position and pulled from various angles?

A. To my estimation, I think he pulled straight.

Q. What was the position of the Sunlight with reference [136] to the North Queen?

A. I think he was west or northwest.

Q. About how far away?

A. Well, I really don't know how far away.

Mr. Verleger: That is all, your Honor.

Recross Examination

By Mr. Lande:

Q. On the second attempt the North Queen was considerably further from the Pioneer than on the first attempt, was it not? A. I didn't get that question.

The Court: Read the question, please.

(The question was read.)

A. Well, I don't know, because I was just going back to the Pioneer.

Q. By Mr. Lande: Well, as a matter of fact, you don't know the actions of the North Queen as it was pulling on the second time at all, then, do you? You weren't watching the North Queen the second time she was pulling, were you? A. I didn't say I did.

Q. Well, during the time of the second pull you were in the skiff alongside the Pioneer?

(Testimony of Paul Tipich)

A. At the second time, at the time of the second pull I was over at the Sunlight in the skiff, in the small skiff.

Q. And your attention was on the Sunlight? [137]

A. Well, we was talking to the fellows there.

Q. And you weren't watching the North Queen then, were you?

A. No, we weren't watching the North Queen. The fellows told us that they already had pulled the Pioneer off, and then they let go of the Manila line.

Q. So, as a matter of fact, you don't know how the North Queen was maneuvering in its second attempt to pull the Pioneer free?

A. I seen the first time she was pulling more or less straight, and I presumed the second time was about the same.

Q. That is just your assumption that you are giving us on that subject; is that right?

A. Well, I could see—what was that question again?

Q. As to the maneuverability of the North Queen on her second attempt, the second time she was trying to pull the Pioneer free, you didn't actually see the vessel and watch it, did you?

A. Well, I would say I did. Not all the time, but maybe just a glance. I wouldn't say I was watching it steady.

Mr. Lande: That is all.

Mr. Verleger: That is all.

(Witness excused.)

Mr. Verleger: I will call Joe Mardesich. [138]

JOE MARDESICH,

called as a witness by and on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: Take the stand, please, and state your name clearly.

The Witness: My name is Joe Mardesich, M-a-r-d-e-s-i-c-h, and I am the engineer and part owner of the boat Pioneer.

The Clerk: Just be seated.

By Mr. Verleger:

Q. Mr. Mardesich, will you state—

Mr. Verleger: Is his statement as to his capacity in the record?

The Court: He said he was the engineer and part owner of the Pioneer. I think he said it after he was sworn, so we will consider it as a part of the evidence.

Q. By Mr. Verleger: Can you tell at approximately what time did the Pioneer strand?

A. I can only tell you what they told me because I didn't look at no watch or clock at the time.

Q. Strike the question, then. After the Pioneer stranded, what steps did you take to alight the ship?

A. I immediately released or disconnected the water piping on our fresh water tanks. We have two fresh water tanks, and each has a capacity of 800 gallons. [139]

Q. What is the consequence of releasing those parts or disconnecting them, as you say?

A. We have a valve on each tank, and I pulled out the body—I unscrewed the body of this valve to release this water.

(Testimony of Joe Mardesich)

Q. Then what happened to the water?

A. It empties into the bilge of the engineroom.

Q. What happened to it from there?

A. I had a pump going to pump it over the side.

Q. Were you making any preparations at the time the North Queen arrived in any other way to lighten the ship?

A. Yes, I was preparing to pump fuel overboard.

Q. Approximately how much fuel did the Pioneer have on board?

A. Oh, possibly 8 thousand gallons.

Q. Where was the water that you have mentioned stowed?

A. In the engineroom. It is considered forward because our engineroom is ahead of midship.

Q. Where is the fuel oil stowed?

A. The fuel oil was forward, extreme forward. Not all, though.

Q. Can you state how each part of it was stowed, then?

A. We have a tank forward and we also have tanks aft.

Q. How much of your fuel was stowed forward and how much aft, approximately? [140]

A. Out of the 8,000 gallons I think we had 5,000 aft and 3,000 forward.

Q. Did you observe the manner in which the North Queen pulled against the Pioneer when she pulled the second time?

A. You mean in relation to the North Queen?

(Testimony of Joe Mardesich)

Q. Strike the question. Did you observe the manner in which the North Queen pulled on its line in relation to the Pioneer the second time, that she took a strain on the line? A. No.

Mr. Verleger: I think that is all, Mr. Mardesich.

I would like, your Honor, to call Marion Joncich again, briefly, for one question on direct. Any objection?

Mr. Lande: Just a minute. I want to cross-examine.

Mr. Verleger: Surely.

Cross-Examination

By Mr. Lande:

Q. You told us you had 3,000 gallons of fuel oil forward and 5,000 aft. In order to pump that overboard you would have to put that through a line whose diameter was approximately how many inches or fractions of an inch?

A. I have a fuel transfer pump that is an inch and a quarter, a fuel transfer pump.

Q. That is your fuel transfer pump is an inch and a quarter?

A. And the lines are also an inch and a quarter. [141]

Q. Are your lines all the same?

A. Except on the very outlet they reduce down to one inch.

Q. So that in order to pump that overboard it eventually had to go through at about—

A. 1,000 gallons an hour.

(Testimony of Joe Mardesich)

Q. All right. Then it would have taken you 8 hours to have pumped it overboard?

A. 8,000 gallons will take 8 hours. I would not pump the stern oil. I wanted to pump the oil that was forward.

Q. And it would have taken you three hours to pump the forward oil? A. Yes.

Q. Then on your water line, how small a line did your water have to go through?

A. It was a three-quarter-inch line.

Q. How many gallons an hour could you pump through that? A. Gravity.

Q. That is strictly gravity? A. Yes.

Q. How would you get that out of your bilges then?

A. Oh, I pumped it out of the bilges, but it was gravity out of the tanks.

Q. How long would it take to drain the tanks?

A. They were full, and it was coming out pretty fast. [142]

Q. Well, in your judgment?

A. Well, the first hour would drain over half of it. Then it would take longer as the level got lower.

Q. About two and one-half hours would be a fair estimate?

A. To drain all of it, I guess, or a couple of hours.

Q. Then after you drained it you had to pump it out of your bilges?

A. I was doing that in the meantime continuously.

(Testimony of Joe Mardesich)

Q. But it would have taken two and one-half hours to get your water overboard?

A. To the last drop, yes, a couple hours.

Mr. Lande: Thank you. That is all.

Redirect Examination

By Mr. Verleger:

Q. One further question on direct. A. Of me?

Q. Yes. A. All right.

Q. Mr. Mardesich, how much of the water did you actually have overboard at the time the Pioneer came free?

A. Oh, from three to four hundred gallons.

Mr. Lande: I am sorry. I didn't get that.

(The answer was read.)

Q. By Mr. Verleger: Would it not have been possible for [143] you to pump fuel oil overboard in the same way as you pumped your water, that is, by breaking your connections and permitting it to run into bilges and pumping it out with your pumps there? A. Fuel?

Q. Yes.

A. Oh, it would take me a long time to break the connections.

Q. I see.

A. I suppose I would get it out faster with a pump.

Mr. Verleger: That is all.

(Witness excused.)

Mr. Verleger: Next I would like to call Captain Joncich for another question on direct.

CAPTAIN MARION JONCICH,

recalled as a witness on behalf of the respondent, having been previously sworn, testified further as follows:

Direct Examination

By Mr. Verleger:

Q. Captain Joncich, how far out of the water was the water line of the Pioneer at the bow before it stranded?

Mr. Lande: Just a minute. I object to that, your Honor, there being no foundation that the captain was in a position to see the water line at the bow. If he was, I don't object.

The Court: Will you read the question? [144]

(The question was read.)

The Court: How would he be placed in a position to see it?

Mr. Verleger: If that is the objection, sir, I will be glad to lay a foundation.

Q. By Mr. Verleger: Captain Joncich, do you know how far out of water the water line of the Pioneer was before it stranded?

A. Well, under fishing law we always see where we have copper line and I see in the pilot-house was maybe one foot.

Q. About one foot above the water line?

A. One foot over water.

Q. All you know in this case is your general practice—I will withdraw the question. Do you have any specific recollection as to how far out you were?

A. I don't know how much was at the bow. I was on the rock, and then I never looked outside. I don't know.

Mr. Verleger: That is all.

(Testimony of Captain Marion Joncich)

Cross-Examination

By Mr. Lande:

Q. Captain, when your boat was on the rocks, stranded, you could tell the bow was up in the air, couldn't you?

A. Yes, I could tell maybe a foot or two, but not six or seven, absolutely not, because I was on the ship.

Q. Well, would you say it was between three and five [145] feet?

A. If five feet I cannot stand up in the pilot-house. But I see in the pilot-house it was maybe one foot. I don't know how Mr. Xitco can say because he was maybe 250 fathoms away, and to say it was five feet, I don't know how he can.

Q. He had a searchlight on you, didn't he?

A. I never saw searchlight, no, that they spot us. Maybe I turn around in the pilot-house and not see, but I never see they spot us.

Q. Didn't he have the searchlight on you about three times? A. I don't remember that, absolutely not.

Q. But there was an inclination to your vessel, was there not? The bow of your vessel was raised after the stranding?

A. Yes, raised about a foot. But I don't want to say exactly. I know it was raised, something like a foot, a foot and a half.

Q. Now, when you went on the rocks you were moving and looking for fish at that time, were you not?

A. Yes.

(Testimony of Captain Marion Joncich)

Q. And doesn't your vessel go about nine knots an hour?

A. No. We overhaul when the full moon is. We was overhauled before we go fish, and we run slow for a couple of days, like that, and we go slow. We going about eight [146] knots, and regular speed is about ten.

Q. You were going about eight knots at that time?

A. Yes, at that time.

Q. At the time you hit you were going about that?

A. That is it, about eight.

Mr. Lande: That is all.

Mr. Verleger: That is all.

(Witness excused.)

Mr. Verleger: Next I would like to call Captain Fritz Scheibe.

CAPTAIN FRITZ A. SCHEIBE,

called as a witness by and on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: Be seated, please, and state your name.

The Witness: Captain Fritz A. Scheibe, S-c-h-e-i-b-e.

By Mr. Verleger:

Q. Mr. Scheibe, have you ever made a survey of the North Queen for the purpose of determining its value?

A. I have.

Q. At what time? A. During April of 1947.

Q. And the value of the North Queen at that time would be substantially the same as her value as of January 9, 1947?

A. It would be substantially the same. [147]

(Testimony of Captain Fritz A. Scheibe)

Q. Mr. Scheibe, what is your occupation?

A. Marine surveyor.

Q. How long have you been practicing as a marine surveyor?

A. Since 1927.

Q. What is your experience at sea?

A. Since 1912. From 1912 until I went surveying.

Q. What is the extent of your experience in valuing fishing vessels?

A. Since 1927.

Q. Have you surveyed very many fishing vessels?

A. Very many. Approximately 50 per cent of the boats that fish out of Los Angeles Harbor.

Q. Will you state the extent of your experience in supervising the salvage of fishing vessels?

A. I have called salvage companies in to—salvage companies for the underwriters to salvage stranded vessels for the underwriters, or vessels in trouble. I have never supervised it myself.

Q. Have you participated with those companies in planning the operations and considering the operations to be followed out in the salvage of the vessels themselves?

A. On occasions I have.

Q. When you surveyed the North Queen, what value did you place on her? [148]

Mr. Lande: I object. The question does not state whether fair market value, the value for replacement, or the value for insurance purposes.

The Court: Sustained.

Mr. Verleger: I will withdraw the question.

Q. By Mr. Verleger: At that time what did you figure the replacement value of the North Queen to be?

A. The replacement value at that time, to the best of my recollection, was approximately \$125,000.

(Testimony of Captain Fritz A. Scheibe)

Q. Is that the replacement value new?

A. That would be the replacement value new.

Q. In arriving at the fair market value at the time the actual survey was made, did you make any deduction from the replacement value?

A. I did not make a market value. I made a value for insurance purposes only.

Q. Do you believe that it is possible to place a fair market value at a given time on a vessel such as the North Queen?

A. I wouldn't attempt to put a market value on any fishing vessel. Market value is dependent on the amount of fish that is available to be caught and certain fishing conditions. When there is no fish, the value of the boats goes down, and when there is lots of fish the value of the boats go up; and also depending on how badly somebody else wants [149] the boat.

Q. Do fishing boats sell for constant market prices, or do the prices vary greatly from sale to sale?

A. The prices vary greatly.

Q. In your opinion, what is the only satisfactory way to place a valuation upon a fishing boat?

A. For insurance purposes, to calculate the replacement value. That would be the cost as of the time of the survey for a new boat of similar size and machinery, and from that the depreciated value is arrived at by deducting five per cent a year for every year of the vessel's life, and to that is added any renewals or additions that have been made.

Q. Is that depreciation based on experience as to the life of such boats?

A. It is.

(Testimony of Captain Fritz A. Scheibe)

Q. On that basis, what valuation would you place on the North Queen?

A. Approximately \$100,000.

Q. Mr. Scheibe, after the Pioneer was brought into port following her stranding, did you make a survey of the Pioneer? A. I did.

Q. Are you able to state without reference to the survey which you had made, the nature of the damage to the Pioneer? [150]

A. The metal stem band, the lower end of the stem band, was torn up. The forefoot was crushed. The entire hardwood shoe was missing. The keel was crushed from the forefoot to approximately within three feet of the stern proper. The fathometer blocks on each side of the keel were cracked. The propeller was damaged, and the strainers on the sea suction lines were broken.

Mr. Verleger: Your Honor, I have here, in addition to the pictures which have previously been offered of the bottom of the Pioneer, a number of other pictures of the Pioneer, which I wish to offer for identification for use by the captain in describing the nature of the damage.

Mr. Lande: It is understood that these are not pictures of the boat showing the damage to the boat.

Mr. Verleger: I think they will show—they do not show any damage. They are simply for use in illustrating the parts that were damaged.

Mr. Lande: In other words, these pictures were taken after the damage was repaired?

Mr. Verleger: That is quite right. As a matter of fact, they were taken quite recently.

The Court: Is there any objection to them?

Mr. Lande: No, your Honor.

(Testimony of Captain Fritz A. Scheibe)

The Court: They will be marked as such.

The Clerk: Marked as Respondent's Exhibits A, A-1 and A-2, [151] for identification.

(The photographs referred to were marked Respondent's Exhibits A, A-1 and A-2, for identification.)

Q. By Mr. Verleger: Captain Scheibe, taking these pictures, will you indicate as well as you can the line of damage to the hardwood keel? I am sorry. I will withdraw that.

First, will you show what the hardwood keel shoe is on these photographs?

A. That (indicating) is, that lower part on these pictures. That is approximately the three-inch hardwood strip that runs the full length of the keel. That is this piece right here.

Q. That strip is below the keel proper?

A. That is correct.

Q. Will you take this pen, Captain Scheibe, and draw a line and mark the end of it "1"?

A. The end of which?

Q. Will you take this pen and mark a line along the line of the hardwood keel shoe, and mark that line "A"?

(The witness did as requested.)

Mr. Verleger: Let the record show that the mark "A" referred to is made on Libellant's Exhibit No. 8, for identification.

Q. By Mr. Verleger: Will you show the line, as well [152] as you can, along which the keel was crushed and splintered?

A. I can't show the full length on these pictures because the keel doesn't extend—the picture does not extend the full length of the keel.

(Testimony of Captain Fritz A. Scheibe)

Q. Am I correct in stating that this damage is greatest at the bow and lesser at the stern of the vessel?

A. That is correct.

Q. How much of the keel, of the original piece of timber which formed the keel remained after the stranding?

A. I can only say how much was removed. I can't say how much was remaining because the keel extends above this first plank, and I don't know how thick that section was.

Q. Well, how much below the first plank?

A. It was removed within four inches of the first plank at amidships and forward. At the bow it was entirely removed for a distance of approximately six feet.

Q. The first plank that you refer to is the plank of the bottom that is immediately next to the keel; is that right?

A. That is correct.

Q. Will you show in these pictures where the forefoot of the Pioneer is?

A. Here (indicating).

Q. The forefoot is a piece of timber outside the hull of the vessel itself; is that correct? [153]

A. That is correct; also extends in behind the planking.

Q. Was the portion of the forefoot that extends in behind the planking damaged?

A. Yes.

Q. In what respect was it damaged?

A. It was crushed.

Q. Will you show where the fathometer hull fitting blocks are in these pictures?

A. There is one on each side.

Mr. Verleger: Will the record show that the fathometer hull fitting blocks are marked "B" on Libellant's Ex-

(Testimony of Captain Fritz A. Scheibe)

hibit 8, and that the forefoot is marked "C", and place an arrow to what you have referred to, on Libelant's Exhibit A-2, for identification.

Q. By Mr. Verleger: What damage did the ship bottom butts and seams show?

A. It showed several butts—cement in several butts cracked.

Q. Can you show approximately where those butts are on these pictures?

A. This picture shows the vessel painted recently and there are no butts visible. There are no butts visible in these pictures.

Q. What damage did the rudder of the Pioneer suffer [154]

A. The rudder was twisted and the bolts were slack, the through bolts, through the brads.

Q. Was there any indication on the rudder as to where it struck?

A. On the under side.

Q. Did the upper rudder shaft show any damage?

A. The upper rudder shaft was bent.

Q. To what do you attribute the damage to the upper rudder shaft?

A. The rudder being forced upward.

Q. Did the rudder stuffing box show any damage?

A. It was loose.

Q. Where is the rudder stuffing box?

A. The rudder stuffing box is inside the hull and cannot be seen on these photographs.

Q. Is it above the shaft from the rudder?

A. It is above the horn damper. The shaft of the rudder goes through the stuffing box.

Q. The horn damper is above the rudder properly, within the hull?

A. That's right.

(Testimony of Captain Fritz A. Scheibe)

Q. Were the propeller blades of the Pioneer damaged?

A. They were. The tips were bent.

Q. Was the tail shaft damaged?

A. I would have to refer to the report. I don't [155] remember that. There was so much on that.

Mr. Lande: I will stipulate that he can refer to the report, Mr. Verleger, to see.

The Witness: If I can see in it what was done to it.

Q. By Mr. Verleger: You may refer to the report.

A. Yes, the tail shaft was bent.

Q. Did any of the screens on the sea suction show any damage?

A. Yes, they did. They were renewed.

Q. What was the nature of their damage?

A. May I refer to that again?

Q. Yes.

A. They were crushed from coming in contact with the bottom.

Q. Did the planking on the sides of the Pioneer show any damage? I will withdraw that.

Did the plank on the sides of the bottom of the Pioneer show any substantial damage?

A. None of the planking was renewed. There was no damage to the planking on her bottom.

Q. Was there any hole anywhere in the bottom?

A. Only in forefoot.

The Court: Did that go clear through the hull, Mr. Scheibe?

The Witness: No, sir. That went to the dead-wood. [156]

Q. By Mr. Verleger: Captain Scheibe, are you familiar with the construction of the bottom of the Pioneer in the neighborhood of the keel? A. I am.

(Testimony of Captain Fritz A. Scheibe)

Q. Will you draw on this piece of paper a diagram of the construction of the keel and the hull of the Pioneer, of the bottom?

(The witness did as requested.)

Q. Mr. Scheibe, what is the size of the construction of the keel—

Mr. Verleger: I beg your pardon, your Honor. First, I would like to offer as Respondent's Exhibit next in order, for identification, this paper.

The Court: You merely want it marked for identification?

Mr. Verleger: Yes. I think after it has been tied up I can offer it in evidence.

Mr. Lande: I will stipulate it may go in evidence as showing his opinion of the construction of the bottom.

The Court: Mark it in evidence, then.

The Clerk: Marked Respondent's Exhibit B, in evidence.

(The paper referred to was marked Respondent's Exhibit B, and was received in evidence.)

Mr. Verleger: Your Honor, I would like to offer in evidence the photographs to which Captain Scheibe referred, as [157] showing the points on the Pioneer which suffered damage.

Mr. Lande: No objection.

The Court: They are merely illustrative of what they show. I believe the Captain said they did not show the damage.

Mr. Verleger: They show the places, or, at least, many of the places which suffered damage.

The Court: Very well. The photographs will be so marked as merely illustrative.

(Testimony of Captain Fritz A. Scheibe)

The Clerk: Yes, your Honor.

(The photographs, previously marked Respondent's Exhibits A, A-1 and A-2, for identification, were received in evidence.)

Q. By Mr. Verleger: What is the construction and nature of the keel here shown?

A. The keel is wood on this vessel, approximately 12 by 16 inches, 12 inches wide and 16 inches deep approximately. Now, I could give you the exact figure.

Q. How thick is the plank abutted to the keel?

A. The two lower garboard planks are three-inch. The remainder of the planking is two and one-half.

Q. Will you mark the two garboard planks, please?

(The witness did as requested.)

Q. Of what dimensions are the frames?

A. They are sawed frames. Each member is three inches wide. They vary in depth with the curve of the vessel. [158]

Q. From what?

A. They are double, three inch. They are double, two sections, three inches wide, bolted together.

Q. What are the dimensions of the keelson?

A. I don't know that.

Q. Can you give it approximately?

A. Approximately 12 by 12.

Q. Will you show how the keelson and sister keelson is shown on your exhibit, and the frames of the keel?

A. The vessel is built—the keel laid down first, and the frames set down, and all bolted together. This vessel is built by Al Larson, and he uses this method. He puts a drift in, which consists of an iron rod with a head on it, through the frames.

(Testimony of Captain Fritz A. Scheibe)

Q. Does that drift penetrate into the keelson?

A. It is through the frames into the keel. Then the space between the frames is filled with plank. The keelson is then fastened with drifts into the keel along—at different points along the length of the keel. Then the sister keelson on each side is likewise fastened with drifts to the keel. On this picture that is all shown in one section. However, they are spread out throughout the length of the vessel.

Q. Are the garboard planks drifted into the keel?

A. They are. In this vessel the garboard planks, the [159] two garboard planks are fastened like this with drifts into the keel on both sides.

Q. Is this manner of construction stronger than usual in fishing vessels? A. Yes.

Q. What is the effect of that manner of construction, from the point of view of protecting the ship in being struck from below?

A. It ties everything together, the keel, the keelson, the sister keelson and garboard planks.

Q. I will ask you to assume, Captain Scheibe, that the Pioneer stranded at between 6:30 and 7:30; that at the time she stranded that the water line at her bow was about one foot to a foot and a half out of water, and that the water line at the stern was even with the water; that the tide was low at approximately 5:30 in the afternoon and high at approximately midnight, with a 5.6-foot rise in the interim, and that the Pioneer was rolling in a slight swell on the rocks. I further ask you to assume that she was pulled off at between 7:30 and 9:00 o'clock. Under those circumstances, in your opinion, if she had remained on the strand and had not

(Testimony of Captain Fritz A. Scheibe)

been so pulled off, is it likely that she would have come off with the rise in tide?

A. In my opinion, she would have come off with the rise in tide. [160]

Q. Is it your opinion that she would have suffered a great deal of additional damage—well, would have suffered substantial additional damage before she came off with the rise in tide?

A. That is a hard question to answer. I wasn't there. I didn't see the condition of the bottom. However, after the vessel was hauled off, it showed no evidence of rupture in the immediate vicinity of the planking, so I assume there would not have been any damage to the planking.

Q. Do you think that the keel structure was sufficiently strong to endure such pounding as might take place immediately incident to being freed with the rise in tide?

A. Would you repeat the question, please?

(The question was read.)

A. I do.

Q. Does the damage that you have described and that you observed indicate that the Pioneer made substantial contact with the rocks at any point except on its keel?

A. And the rudder and propeller.

Q. Does it indicate that the planking of the vessels was pounding against the rocks? A. No.

Q. As the tide rose, assuming the circumstances as stated to you, is it your opinion there would be more damage or less damage of the planking coming into contact with the [161] rocks?

A. Not of the planking, but of the keel.

Q. Would there be more danger of the planking coming into contact with the rocks?

A. In my opinion, no.

(Testimony of Captain Fritz A. Scheibe)

Q. Why do you say that?

A. When the vessel was seen, there was no evidence there were any rocks near the planking.

Q. In your opinion, Captain Scheibe, if the Pioneer went hard aground at between 6:30 and 7:30, and her bow was from three to five feet—her water line was from three to five feet out of water, could a fishing vessel with a motor of 300 horse-power pulling on a $\frac{5}{8}$ -inch cable free the Pioneer?

Mr. Lande: I object to that, your Honor, as not containing the element as to the manner in which the pulling of the North Queen was done. On a straight pull the evidence is that the line parted but on a swerving back and forth the evidence is that she worked her off.

Q. By Mr. Verleger: In the last question you may assume: If the Pioneer was hard aground and had not in whole or in part been freed by the tide, and was in a position with her bow from three to five feet out of water, could a vessel the size and capabilities of the North Queen, with an engine of 300 horse-power pulling on a $\frac{5}{8}$ -inch steel wire [162] by swerving back and forth pull the Pioneer off? A. No.

Q. Why do you say that?

A. You assume that the bow is four to five feet out of water and it is never hard and fast aground. By pulling with a fishing boat and with a 300 horse-power engine, he hasn't sufficient horse-power to move that vessel when it is hard and fast.

Q. In your opinion, is it essential before such a pulling operation can be successful to have the boat partly freed by the rise in tide? A. It is.

(Testimony of Captain Fritz A. Scheibe)

Q. You may assume that the Pioneer went aground at approximately between 6:30 and 7:30 and the tide conditions were as previously stated; that her bow was approximately one foot to a foot and a half out of water when she stranded, and that she came off between 7:30 and 9:00 o'clock. What, in your opinion, was the principal factor in freeing her? A. Tide.

Q. No further questions. Oh, I am sorry. I do have another question.

In your opinion, Captain Scheibe, and I refer you to Libellant's Exhibit 3, in your opinion, is it sound practice for a vessel of the size and dimensions of the North Queen in taking a towline from a stranded vessel such as the Pioneer [163] to use a double block and a chain from the boom to lift up the line over the nets, and to secure that double block and that chain by wrapping the chain around the cable in such a manner that the cable is held if and when the towing line should part?

Mr. Lande: I object to that, your Honor, that the witness is not qualified to testify to that question. He is not a man that has had experience or special learning in the operation or handling of either fishing vessels or salvage vessels. He is a marine surveyor that makes inspections and makes reports and makes valuations. I submit he is not entitled to answer that question.

The Court: He may have additional qualifications. If he has, they should be elicited, Mr. Verleger.

Q. By Mr. Verleger: Captain Scheibe, what is your experience as a mariner?

A. I graduated from the New York State Nautical School. I held a third mate's license. I served a year as quartermaster on a large vessel, I served as third mate one year, I served as second mate for a year and a half,

(Testimony of Captain Fritz A. Scheibe)

and I served as mate one year. Then I went in the Naval Reserves in—no, I didn't serve as mate. I served as second mate, and then I went in the Naval Reserves in 1917 as an ensign and was promoted to lieutenant, and served in the Navy as an executive officer of a collier, of a tugboat and a small [164] transport in the Philippines until 1922. Then I returned to the Merchant Marine and served as third mate and second mate and first mate and master, and also served at the Wilmington Transportation Works as a deckhand to obtain a pilot's license in Los Angeles Harbor.

Q. In your experience as a surveyor, have you had frequent occasion to consider casualties on fish boats and to estimate the various methods of handling such boats?

Mr. Lande: I will withdraw the objection.

The Court: Will you read the question, please?

(The question was read.)

The Witness: I have had lots of experience in checking on damages on fish boats, but I have never served on a fish boat and, therefore, do not know all the facts about handling fish boats, nets, turntables, and so forth.

Q. By Mr. Verleger: What is the extent of your experience in towing, Mr. Scheibe?

A. Towing transports for the Navy, battle transports; towing other Naval vessels; towing barges.

Q. Mr. Scheibe, is it not of extreme importance in towing, and in any operation when a vessel is required to pull against a substantial resistance at the other end of a line to make certain that the line is so secured as to avoid damage, to minimize damage to the towing vessel if and when the towing line should break? [165]

A. It is.

(Testimony of Captain Fritz A. Scheibe)

Mr. Lande: I object to that as no foundation laid that the man is an expert to so qualify him, so far as this vessel, the North Queen, is concerned.

The Court: That is close to a physical factor, is it not? I mean, that is within common knowledge?

Mr. Lande: If it is possible to do it, yes. The testimony has been so far that with the particular equipment he had to work with he had to do it in this way.

Mr. Verleger: I think, as a matter of fact, witnesses have testified that it would be possible to secure the line in two ways and one did not involve the particular risk that was raised by the other.

Q. By Mr. Verleger: In your opinion, Mr. Scheibe, is it possible to avoid any substantial risk to the rigging of a vessel such as that shown here on Libellant's Exhibit 3, when it is desired to hold the line, the towline above the vessel's nets?

Mr. Lande: I object to that on the ground that the witness is not qualified to answer.

The Court: I think he said he hadn't any experience with these fishing boats. Is that right?

The Witness: I have never been on a fishing boat as a member of the crew. I have been on plenty of them and checked over the equipment. [166]

The Court: Have you ever been on them when they have had occasion to tow another boat?

The Witness: No, sir.

The Court: Sustained.

Q. By Mr. Verleger: Mr. Scheibe, you may assume that on Libellant's Exhibit No. 3 the towline from the Pioneer was held above the nets by a chain wrapped around the cable, which in turn was held to the boom

(Testimony of Captain Fritz A. Scheibe)

by a double block with four 3-inch lines, and that the boom in turn was held back to the mast by four 3-inch lines, and that the mast itself was stayed by a 1-inch steel line. Which of those various lines, including the towline, the double falls and the four lines supporting the boom and the stay supporting the mast is the strongest? I am sorry to say I meant to say is the weakest?

The Court: Which is it now, "strongest" or "weakest"?

Q. By Mr. Verleger: Is the weakest?

A. Am I assuming or knowing the condition of the towline before I answer that? I know the condition of the towline after that.

Q. Then before answering that question, I will ask you what you knew about the condition of that towline?

A. The towline was a $\frac{5}{8}$ -inch wire cable that had been galvanized. When I saw it, it was parted in three places and was very rusty.

Mr. Lande: May I ask a question on voir dire? [167]

The Court: Yes.

Mr. Lande: At what time did you see the towline?

The Witness: When the vessel came into the Harbor Boat Works, the day after the stranding.

Q. By Mr. Verleger: Now, Mr. Scheibe, will you answer the question I gave to you as to the relative strengths of those various lines?

A. It is my opinion that the $\frac{5}{8}$ -inch wire would have broken—all the other equipment on the vessel being in good condition, the wire would have broken first.

(Testimony of Captain Fritz A. Scheibe)

Q. Which would take a greater strain, the lines supporting the boom to the mast or the rigging supporting the mast? A. The topping lift on the boom.

Q. If, therefore, any of the rigging of the North Queen broke under the strain of the conditions that have been described, the anticipatory consequence would be that the boom would fall; is that correct?

A. That is right.

Q. What is the value of the boom and the rigging, including the cost of the labor and installing same?

A. A wood boom that size is worth approximately \$300.

Q. And does that include the cost of installing the boom? [168] A. Yes.

Mr. Verleger: That is all.

Cross-Examination

By Mr. Lande:

Q. And if the boom came down, there would be danger to the crew members?

A. If they were underneath the boom, yes.

Q. And their lives would be in danger?

A. If they were underneath the boom.

Q. As a matter of fact, when things come down you can't be sure what is going to tear down, can you?

A. That's right.

Q. The whole thing could have come down on all the eleven men that were there? A. It is possible.

Q. And whoever happened to be underneath could have had the mast or boom throw him overboard or kill him? A. That is possible also.

(Testimony of Captain Fritz A. Scheibe)

Q. Mr. Scheibe, will you show on your diagram here where the sea suction plates are?

A. I can show it best on the picture.

Q. I wish to have it shown.

A. The sea suction plates are approximately in this position. The sea suction are—they are holes through the side, and these screens go over the outside of them. [169]

Q. Now, Mr. Scheibe, you testified, did you not, that these sea suction plates showed damage from the bottom of the ocean?

A. That is right.

Q. So that the vessel was rocking over on her sides?

A. That's right.

The Court: You have indicated those on Respondent's Exhibit B, have you not?

The Witness: That is right. Do you want me to mark that "Sea Suction Screen"?

Mr. Lande: Yes.

Q. By Mr. Lande: Isn't it true that if she rocked over so far that she would hit her sea suction screens, she could have rocked over far enough to puncture her sides?

A. Depending on the condition of the sea.

Q. That could have happened, couldn't it?

A. It is possible, if the sea had gotten rougher.

Q. Or if she had started to roll more?

A. If she had rolled more, it is possible.

Q. When she went on there first, she went on there hard, didn't she?

A. I don't know.

Q. As a matter of fact, you haven't been engaged in any salvage operations yourself, have you?

A. Yes, I have. [170]

Q. How many?

A. Oh, on the Congress, the Kingfisher, the Sweet.

(Testimony of Captain Fritz A. Scheibe)

Q. In what capacity were you?

A. Surveyor, representing the underwriter.

Q. All right. Were you there when the vessels were salvaged? A. Yes.

Q. Did you direct the salvage operations?

A. I had a salvage master, a salvage company doing the operations.

Q. Now, these ribs that you have going out here, what do you call them? A. Frames.

Q. Frames. They are spaced about how far apart?

A. Depending on the size of the vessel and the size of the frames.

Q. We are talking about the Pioneer.

A. I can't tell you offhand. I have no survey report that gives me that information. I can't remember.

Q. What would be the approximate distance?

A. Between centers, 18 inches at the most.

Q. In other words, it would be 18 inches—

A. Between centers. They are 6 inches wide themselves.

Q. That would mean that would be 12 inches in between? A. That is right. [171]

Q. In that 12-inch space you have 2½-inch planking?

A. That's right.

Q. And it is in that 12-inch space where the hull is punctured if she rolls over on the rocks and becomes punctured? A. It is possible; also on the frames.

Q. It could break a frame? A. Yes.

Q. But the easiest place would be between the frames?

A. Yes.

(Testimony of Captain Fritz A. Scheibe)

Q. This vessel was rocking quite a bit, wasn't it, to smash the sea suction screens?

A. Yes, and it didn't crush them. It crushed the strainers.

Q. In order to crush the strainers she had to get over that far? A. Yes.

Q. Now, on your keel, that keel is 16 inches deep?

A. Yes.

Q. And half of that was damaged? A. Yes.

Q. It takes a tremendous amount of rocking on those rocks to damage 8 inches by 12 inches solid pine, does it not?

A. A good bit of that might have been torn up when he went aground. I don't know. [172]

Q. It not only damaged his keel, but he had his hardwood and his iron shoe underneath damaged. And what did you say happened to that?

A. It was torn off.

Q. It was torn off?

A. Yes. That is spiked on.

Q. Now, this damage to his propeller blades, that would mean that his ship would have to roll enough so that the propeller blade would come in contact with the rock on the sides; isn't that right?

A. That's right.

Q. And that propeller blade is protected underneath by the keel shoe? A. That's right.

Q. So that we know, then, that the boat not only rocked enough to do damage to the suction knobs, but also to the propeller, as she rocked from side to side?

A. It could have been rocking and a rock be in the vicinity of the propeller.

(Testimony of Captain Fritz A. Scheibe)

Q. And the rock that could have been in the vicinity of the propeller could have been a rock that might have punctured the hull; isn't that right?

A. Not while she stayed aground.

Q. No, but if she was working and rocking off of there, that is the damage that could happen? [173]

A. But the rock in the vicinity of the propeller did not damage any planks.

Q. Suppose that the rise in tide carried the vessel in with it. After all, when the tide rises there is a current that goes in shore, isn't there?

A. I don't know how the current runs there on the tide.

Q. You don't know that?

A. I don't know how the current runs in that area with the tide.

Q. If it is an incoming tide, the tide and the current of the tide is going inshore, regardless of the—

A. The swell goes inshore. The current may run parallel to the shore, the tidal current.

Q. You don't know what it is there?

A. No, I couldn't tell you. I would have to look at the tide chart.

Q. Will a tide table show you?

A. No, it will have to be a current chart.

Q. Will a current table show you?

A. A current table might show it to me.

Q. Here it is on January 9th. Is that what you wanted?

A. No, that doesn't show the direction. You would have to have a current chart. That shows the direction.

Q. Well, let's assume that as the tide rose the current was going inshore. [174]

(Testimony of Captain Fritz A. Scheibe)

Mr. Verleger: Your Honor, I object on the ground that there is no evidence at all as to which direction the current went.

Mr. Lande: All right. We will lay the foundation later.

Q. By Mr. Lande: Now, you have answered some questions as to what you thought would happen to this vessel when the tide rose. Your answers were not based on any experience you had in salvage of vessels and watching the operations actually being done, were they?

A. Yes, and service on ships that went aground.

Q. But each salvage operation and each freeing is dependent upon the particular factors involved?

A. That's right.

Q. So that your experience does not extend over a series of years in working in freeing vessels that have been stranded?

A. Not just vessels that were stranded, no.

Q. When you were working at the L. A. Harbor, towing, you were towing vessels that were totally free, were you not?

A. That's right.

Q. Towing them from one berth to another?

A. That's right.

Q. No question of straining or working the vessel off, or the best way to get it off?

A. That's right. [175]

Q. You have no experience along that line?

A. Some.

Q. What?

A. Well, I have stranded in the Straits of Magellan and towed the ship off.

(Testimony of Captain Fritz A. Scheibe)

Q. Were you in charge of that operation?

A. I was first mate. The master was in charge. And I was ashore in Shipu, China.

Q. Isn't it a fact, Captain Scheibe, when the vessel first went on the rocks, whether it was the Pioneer or any other vessel, and she strikes hard at low tide, she is held more or less securely in a grounding, isn't she?

A. It depends on the condition of the bottom.

Q. All right. Let's suppose it is a rock bottom.

A. Yes.

Q. And the vessel that goes aground shows damage along the entire keel way back into the rudder, and from the bow to the rudder,—

A. That's right.

Q. —when she first goes ashore, she is held securely, isn't she?

A. That's right.

Q. Now, if you have an incoming tide, so that you are getting a little buoyancy and there is a ground swell that is broadside, then your vessel begins to rock, doesn't it? [176]

A. Yes.

Q. And then she begins to work?

A. Yes.

Q. And that is when the damage occurs, isn't it?

A. Some damage occurs then, yes.

Q. Well, the amount of damage, of course, you don't know, do you?

A. No.

Q. If there is enough buoyancy and enough ground swell, and if the rocks are present in the right position, she can puncture and flood and be a total loss?

A. That's right.

Q. So you don't know, Captain Scheibe, that before she came free, and we are talking about the Pioneer,—

A. Yes.

(Testimony of Captain Fritz A. Scheibe)

Q. —before she came free at high tide, you wouldn't know between the time she got stranded and high tide whether or not she would be punctured? A. No.

Q. She could very well have punctured, couldn't she?

A. If there were rocks in that area, she could very well have punctured.

Q. You know under the hypothetical question that there were rocks in that area, don't you?

A. I was told to assume there were rocks in that area. [177] If there were rocks in that area, she could have punctured, yes.

Q. Very easily? A. Yes.

Q. Probably if the vessel showed damage where her suction pumps were, even under the circumstances that did exist? A. Yes.

Q. In other words, wouldn't you say there was a likelihood she would have punctured her sides with the increased rocking until the high tide came along?

A. I can't say that.

Q. Captain Scheibe, you acted as a marine surveyor for the insurance company on the Pioneer, did you not?

A. That's right.

Q. Are your employers financially interested in the outcome of this law suit?

Mr. Verleger: I object, your Honor. I think first it should be established—I think there is an assumption that Captain Scheibe is employed continuously by the insurance company, or something like that. If the question is relevant at all, I think that should be established. I am perfectly willing to stipulate insofar as the question of Captain Scheibe's interest in this litigation is concerned that I employed him as a surveyor in connection

(Testimony of Captain Fritz A. Scheibe)

with this matter and that I expect, as a matter of fact, to pay him a fee for coming [178] up and testifying as an expert. But, as a matter of fact, the two jobs are entirely different and I don't think, or, as a matter of fact, I am quite sure that Captain Scheibe does not know the answer to the question.

Mr. Lande: Maybe he does know.

The Court: I don't want any argument, gentlemen. Let him finish his objection.

Mr. Lande: I thought he was.

Mr. Verleger: It seems to me since there is no question but what Captain Scheibe is appearing as an expert witness for a fee, the question as to any further exploration as to his interest in the outcome of this thing is quite irrelevant.

The Court: Oh, no. Overruled. Now, we will have the question read.

(The question was read.)

The Witness: I have no employers at present. I am an independent surveyor. I work for a fee on individual jobs.

Q. By Mr. Lande: Do you know whether or not the people who employed you to make the survey that you did make on the Pioneer are financially interested in the outcome of this action?

A. A broker employed me on this, and I have no idea if he has any financial interest in the boat.

Q. He was a broker for an insurance company?

A. That's right. [179]

(Testimony of Captain Fritz A. Scheibe)

Q. Now, did you know that the North Queen was entirely rebuilt in March of 1946?

A. I knew there was certain work done on it when I made the survey in April for a broker.

Q. Would it have made any difference in your estimate of the fair market value and the depreciation on it if the vessel was a purse seiner that was built privately, and in 1942 was taken over by the Navy and operated by the Navy, then taken back by the private owner and then completely rebuilt and refitted as a purse seiner in March of 1946?

A. In March of 1946? May I have the question, please?

(The question was read.)

A. The question is whether I would make any difference in the value?

Q. Yes. Would you increase her value?

A. Not for insurance purposes. That value I stated—I have no figures in front of me. That is last April. I have figured several boats, quite a few boats since.

Q. Would it help you if you saw the survey here?

A. On the North Queen?

Q. Oh, you haven't got the survey on the North Queen?

A. No, I have no survey on the North Queen.

Q. Your testimony is now that the figure of \$125,000 may be off; is that correct?

A. That is correct. That is as far as my memory goes. [180]

(Testimony of Captain Fritz A. Scheibe)

Q. You say you surveyed it for insurance purposes. That does not mean that is what a person could sell the vessel for, and what a fisherman wanted the vessel for?

A. That is not a market value. That is a depreciated value.

Q. So that the market value naturally is higher, isn't it?

A. Depending on the fishing conditions and whether a man has to sell his boat, or whether someone else wants it real bad.

Mr. Lande: All right. That is all, your Honor.

The Court: Was that a replacement value, Captain?

The Witness: That is my—as far as my memory goes, your Honor, that was the replacement value as of that date.

The Court: In other words, you think that at that time that ship could have been built, replaced, for that amount of money?

The Witness: Yes, sir.

Q. By Mr. Lande: Captain, do you think that an oil screw vessel of 150 tons gross, and a length of 82 feet, with a sardine net on her and an Atlas Imperial 320 horse-power engine, with two auxiliaries, could have been built for \$125,000 in January of 1947?

A. I said April. In April I made my report, as I remember it, and I never included the net in the value. [181]

Q. You never what?

A. I didn't include the net.

The Court: The question assumes, I think, that there would be no change between January and April.

A. Between January and April, yes.

(Testimony of Captain Fritz A. Scheibe)

The Court: Was that your understanding?

The Witness: That is right, but I never put a value on the net.

Mr. Lande: All right. - Thank you, sir.

Mr. Verleger: That is all.

(Witness excused.)

Mr. Verleger: The only remaining evidence I have is the depositions of John Joncich, Andrew Joncich and Lloyd Judy, who were members of the crew of the Sunlight. I would like to avoid reading the depositions into evidence, and I would like to suggest, if counsel is willing, to stipulate that the depositions be deemed as read and to offer them in evidence.

Mr. Lande: All right. We will stipulate that the only point about them is that they happened to come up while they were pulling the Pioneer off.

Mr. Verleger: I would like to have the depositions go in.

The Court: So ordered for all depositions. I read a portion of them, and I will read the rest of them. They may [182] be marked in evidence.

The Clerk: The depositions will be marked as Respondent's Exhibit C in evidence.

(The depositions referred to were marked Respondent's Exhibit C, and were received in evidence.)

The Court: How many more witnesses have you?

Mr. Verleger: That is my last witness, except that I want to call Captain Joncich for one more question on direct in connection with the depositions.

The Court: Very well.

CAPTAIN MARION JONCICH,

recalled as a witness on behalf of the respondent, having been previously sworn, was examined and testified as follows:

Direct Examination

By Mr. Verleger:

Q. Captain, are either John Joncich or Andrew Joncich, who were master and member of the crew of the vessel Sunlight, related to you, so far as you know?

A. Not what I know, no.

Mr. Verleger: That is all.

(Witness excused.)

Mr. Lande: I will recall Captain Varnum. [183]

CAPTAIN MYRON VARNUM,

called as a witness on behalf of the libelant, in rebuttal, having been previously sworn, testified further as follows:

Direct Examination

The Court: Is there anything in the record showing the alleged or claimed value of that fish net?

Mr. Lande: No. Perhaps I should put that in, your Honor. I just want to ask this witness a few questions.

The Court: Very well.

By Mr. Lande:

Q. Captain Varnum, in your opinion, assuming the facts I gave you in the hypothetical question on direct examination, would a 400-pound anchor and a 600-pound anchor be sufficient for a vessel like the one I described to pull itself off of a stranding, assuming that the bottom at that place was rock?

(Testimony of Myron Varnum)

A. Well, unless the anchor got caught behind a rock so that it would hold, the weight of the anchor was of the right size that it would heave it home—what did you say the weight of the anchor was? 500—

Q. One 600 pounds and one 400 pounds.

A. You would heave it right home on the bottom.

Q. What weight anchors do they use when they attempt the use of an anchor for a salvage operation?

A. Well, in the business I have been in, we use heavy anchors. [184]

Q. Will you tell the court how heavy?

A. They weigh from 7,000 to 10,000 pounds, three and a half to five tons. That is very heavy work.

Mr. Lande: That is all, Captain.

Cross-Examination

By Mr. Verleger:

Q. May I ask the captain one question: Captain, if the hooks of the 700-pound, or the 750 and the 500-pound anchor caught on the shore, is it not possible they could be used to pull off a vessel the size of the Pioneer?

Mr. Lande: Caught on the shore?

Mr. Verleger: Caught on the bottom.

The Witness: If they caught, they would hold, and you had a good while there.

Q. By Mr. Verleger: And the further out the anchor is dropped from the vessel, the more likely they are to hold?

A. That is right.

Q. You mentioned that you used 7,000 to 10,000-pound anchors in your business. Isn't it true that vessels have on many occasions managed to pull themselves off of strands by using their own anchors, through the

(Testimony of Myron Varnum)

many years in which vessels have gotten into that sort of position?

A. Yes. And I have used them, or, I have been on ships where we have used our anchors and punctured our bottoms and stayed there fast aground, too. [185]

Q. That couldn't happen if the anchor was dropped out deep enough so that the anchor couldn't—

A. It is a pretty hard job to get the anchor out that way.

Q. Are the 7,000 to 10,000 pound anchors special anchors that are used for salvage purposes?

A. They are. They are called eel's anchors.

Mr. Verleger: I think that is all, your Honor.

Mr. Lande: That is all.

(Witness excused.)

Mr. Lande: Mr. Xitco.

ANDREW XITCO, JR.,

called as a witness on behalf of the libelant, in rebuttal, having been previously sworn, was examined and testified as follows:

Direct Examination

By Mr. Lande:

Q. Mr. Xitco, what was the value of the sardine net you had on the turntable on the night of this salvage?

A. \$15,000.

Q. Mr. Xitco, the estimate you gave of \$170,000 for your boat on January 9th, is that what you considered to be the fair market value of your boat on that date?

A. Yes, I did.

Q. That included the net and all?

A. That included the net, the skiff and all. [186]

(Testimony of Andrew Xitco, Jr.)

Q. And the equipment? A. And the equipment.

Q. I believe you quoted the \$170,000 by stating you included the equipment, and which equipment you meant included the net? A. Yes.

Q. Now, referring to these anchors, let's assume, and I will call the court's attention to the answer to our interrogatories, the answer to the 13th interrogatory is, "One of the anchors was carried on the port and the other on the starboard hawse-hole on the bow of the Pioneer." Assuming that to be so, what power could have been used to pull on those anchors, assuming they could have been dropped?

Mr. Verleger: I think, your Honor, I will object to that on the ground that no foundation has been laid to show the witness' familiarity with the equipment used.

Q. By Mr. Lande: Have you seen the Pioneer?

A. Yes.

Q. Do you know what type of anchor she has?

A. She has an anchor very much like we have.

Q. And do you know the horse-power of that winch?

A. Well, we have a 20 horse-power on it, and that is about what they all have, probably 15 to 25 horse-power on the forward winch.

Q. So that the most horse-power she could have on her [187] winch forward would be 15 to 25 horse-power?

A. That's all.

Q. Would she be able to draw directly on those anchors if they dropped out 50 to 75 fathoms forward?

A. No, they would have to come out of the hawse-holes, and you couldn't put them forward. You have to get them in back of the boat, out towards the sea, and drop them.

(Testimony of Andrew Xitco, Jr.)

Q. In other words, using this model here, and first show the court where the hawse-holes are.

A. They are right here (indicating).

Q. Referring to the bow, and showing a place right underneath the stem?

A. Yes, right here is the anchor. We have one on the port and one on the starboard, and you have to run the wire way back here with the anchor and heave them with the anchor winch. It goes out that hole, and there would be that friction there, and binding, and pulling and coming out, and with a 15 horse-power motor like we have, or with a 15 to 25 horse-power like they have on those purse seiners—

Q. I see. And you say the friction in the way you would rig the chain?

A. —it would cut down the pull quite a bit with all that friction.

Q. And that chain could not be used on the winch aft to do it? [188]

A. Well, he doesn't have that much chain to go out there. He said it was 225 fathoms beyond the kelp. That is 1500 feet. They don't have any 1500-foot chain, and he doesn't have that much wire. Generally a boat carries about 100 fathoms.

Q. For your information, the answer shows that she had a 125-fathom chain.

A. Yes, but not 225.

Q. Wouldn't that 125-fathom chain have carried their anchors out beyond the kelp?

A. Well, it would only carry it out for as much as they have, but not carry it out to clean bottom, where we were at the time.

(Testimony of Andrew Xitco, Jr.)

Q. What would have been the effect of dropping the anchors on the kelp?

A. I don't know what the effect would be.

Q. What would have happened when he started to take up the anchors?

A. With all those things, he wouldn't have the power, he would lose it in the binding of the chains, and you get a chain coming out of a hawse-hole,—well, you can practically stop it, with doing no pulling at all, because it binds there. It is a three-quarter chain at least and it binds there, and it won't pull. Without even trying to pull the boat off, it wouldn't take much to stop the chain as it is right there. [189]

Q. In your opinion, could he have used his anchor?

A. The hawse-hole is made to pull up ahead. They are tapered. They are not tapered to pull up astern. In other words, there is a sharp corner there, so they are forward, to pull forward, and not astern. So that three-quarter chain would just get caught and bind, and to try to pull would be impossible.

Q. In other words, it is your conclusion that in taking the anchors aft with the chain would have been impossible?

A. Yes, with the chain he had, it would have been practically impossible. The cable would have more give there, and wouldn't—

Q. But these were attached to the chains?

A. One was on the chain, and the other partly wire and chain.

Q. Would it have taken time to re-rig those anchors so as to take the chains off and put the cable on and put snap blocks on?

(Testimony of Andrew Xitco, Jr.)

A. He can only use chains on one side, and the cable, they have a drum for the cable on the port side, and on the starboard side they have a windlass, which is for chain alone. You could only—the way she is rigged up, you have to use a chain and a cable.

Q. You could not use two cables?

A. No. [190]

Mr. Lande: You may cross-examine.

Cross Examination

By Mr. Verleger:

Q. Isn't it possible, Mr. Xitco, in an emergency of that sort, after the anchor has been dropped, to rig the line from the anchor so that it can be pulled from the stern winch?

A. It is possible on the stern winch with a cable anchor, but his cable anchor is on the port side, in towards the port.

Q. Couldn't he take and place his anchor, put it in a skiff, secure it to cable, and take it out and pull the cable on the stern winch?

A. He could, but he wouldn't—

Q. And doesn't he have the full power of his engines on that winch?

A. No, he doesn't have no 400 horse-power on his back winch. He must have about 40 horse-power.

Mr. Verleger: That is all. No further questions of Mr. Xitco.

Mr. Lande: That is all.

(Witness excused.)

Mr. Lande: May I call Captain Scheibe again, your Honor, for further cross examination?

Take the stand, please? [191]

CAPTAIN FRITZ A. SCHEIBE,

called as an adverse witness on behalf of the libelant, having been previously sworn, testified further as follows:

Cross-Examination

By Mr. Lande:

Q. Captain Scheibe, can you tell us what your estimate of the fair market value of the Pioneer was on January 9, 1947? Or, should I ask the replacement value, seeing you placed a replacement value on the North Queen?

A. I don't have those values. Mr. Verleger has a survey. If I can refer to that, a copy of a survey I made last year.

(A document was handed to the witness.)

Q. What do you show as the replacement value?

A. I show a replacement value of \$150,450, and a present value—this is as of July, 1946—of \$134,500. Had I made a survey of her in January for insurance purposes, not a market value, I would have taken five per cent off of that present value.

Q. You think a replacement value was around \$150,000? A. \$150,000. That is without the net.

Q. That is without the net? A. That is right.

Q. Have you any idea what the net was worth?

A. I have no idea what the value of the net was, don't [192] know the size of it, or anything.

Mr. Lande: Will you step down, please, unless you have some questions, Mr. Verleger?

(Testimony of Captain Fritz A. Scheibe)

Redirect Examination

By Mr. Verleger:

Q. One further question, Captain Scheibe: Do you know what the cost of the repairs to the Pioneer following the stranding was?

A. It is shown in the report as sixteen thousand some dollars for hull repairs, and then an additional seven or eight hundred dollars for the wire.

The Court: Isn't that in the interrogatories?

Mr. Verleger: Yes, your Honor, it appears in the interrogatories.

The Witness: \$16,432.20 is the Harbor Boat Building Company.

Q. By Mr. Verleger: And there is an additional amount of \$813.07— A. For wire.

Q. —for wire? Is that correct, Captain Scheibe?

A. That's right.

Mr. Verleger: That is all.

(Witness excused.)

Mr. Lande: Captain Joncich. [193]

CAPTAIN MARION JONCICH,

called as an adverse witness on behalf of the libelant, having been previously sworn, testified as follows:

Cross-Examination

By Mr. Lande:

Q. Captain Joncich, what was the value of the net, the sardine net that you had on board the night your vessel stranded?

A. It ran around \$15,000, something like that.

(Testimony of Captain Marion Joncich)

Mr. Lande: Thank you. That is all.

(Witness excused.)

Mr. Lande: We rest, your Honor.

Mr. Verleger: I would like to ask one question of Mr. Mardesich, your Honor.

JOE MARDESICH,

called as a witness on behalf of the respondent, in sur-rebuttal, having been previously duly sworn, testified further as follows:

Direct Examination

By Mr. Verleger:

Q. Mr. Mardesich, could you exert the full power of your engines on a cable from your stern winch to an anchor dropped out some distance from the vessel?

A. Well, if you have sufficient power, like we had, our main engine running and our stern winches, our main engine [194] has 400 horse-power. Now, with that power we have a 60 horse-power clutch, and you can do anything with it. You can make it just like a solid, if you want it. You can cinch up on that until it is like a part of the engine, if you understand what I mean, and then you have enough power on your winches to pull as much as the shaft will stand, or the bearings, or whatever is the weakest point, which is usually the line you are pulling. There is such a reduction down to the niggerheads, which are the winches, if you know what I mean.

Q. In your opinion, could you have put as much strain against such a line as the line would stand?

A. Yes. I think any line, and some are better, would snap before you would lose any power.

(Testimony of Joe Mardesich)

Q. And assuming you dropped an anchor so rigged, you could so rig the line from there as to take it on your stern winch?

A. It could be done, but it would be a very slow process though.

Mr. Verleger: That is all, your Honor.

(Witness excused.)

Mr. Verleger: We rest, your Honor.

The Court: Now, gentlemen, you have this case to argue, of course. Let me see our calendar.

Will you be ready to argue this case tomorrow morning, [195] gentlemen?

Mr. Verleger: Yes, sir.

Mr. Lande: Yes, your Honor.

The Court: I think we will hear the argument in the morning. We will allow 45 minutes on each side, and resume the session at 10:00 o'clock tomorrow morning.

Mr. Lande: Your Honor, may I at this time withdraw the model from the court room?

The Court: Is there any objection?

Mr. Verleger: No objection if a picture will be inserted for it.

Mr. Lande: It will.

The Court: I will leave it to you, Mr. Lande, to have the photograph taken.

Mr. Lande: I will personally take the photograph, your Honor.

The Court: Very well.

[Endorsed]: Filed Mar. 4, 1948. Edmund L. Smith, Clerk. [196]

[Endorsed]: No. 11879. United States Circuit Court of Appeals for the Ninth Circuit. Marion Joncich, Joe C. Mardesich and Antoinette Bogdanovich, Appellants, vs. Andrew Xitco, Jr., Appellee. Apostles on Appeal. Upon Appeal From the District Court of the United States for the Southern District of California, Central Division.

Filed March 9, 1948.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for
the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11879

MARION JONCICH, JOE C. MARDESICH and
ANTOINETTE BOGDANOVICH,

Appellants,

vs.

ANDREW XITCO, JR.,

Appellee.

APPELLANTS' STATEMENT OF POINTS AND
DESIGNATION OF PARTS OF RECORD

(Rule 19, Subd. 6)

Appellants, Marion Joncich, Joe C. Mardesich and Antoinette Bogdanovich, hereby adopt the assignments of error appearing in the record in the above entitled case as their statement of points on which they intend to rely on appeal.

Appellants, Marion Joncich, Joe C. Mardesich and Antoinette Bogdanovich, hereby designate the following parts of record in the above entitled matter, which they believe necessary for consideration by the Court of said points:

* * * * *

Dated: March 17, 1948.

McCUTCHEN, THOMAS, MATTHEW,
GRIFFITHS AND GREENE
HAROLD A. BLACK
PHILIP K. VERLEGER

Proctors for Appellants

[Affidavit of Service by Mail.]

[Endorsed]: Filed Mar. 19, 1948. Paul P. O'Brien,
Clerk.